# Customs Bulletin

**Regulations, Rulings, Decisions, and Notices concerning Customs and related matters**


# and Decisions

**of the United States Court of Customs and Patent Appeals and the United States Customs Court**

Vol. 14 JUNE 17, 1980 No. 25

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THE DEPARTMENT OF THE TREASURY
**U.S. Customs Service**

## NOTICE

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# U.S. Customs Service

## *Treasury Decisions*

(T.D. 80–147)

### Bonds

Approval and discontinuance of carriers bonds, Customs form 3587

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: May 28, 1980.

| Name of principal and surety | Date of bond | Date of approval | Filed with district director/area director/amount |
|---|---|---|---|
| Air Express International Corp. (An Il Corp.), and its subsidiary Air Express International Airlines Inc., (A De Corp.), Cargo Bldg., 89, JFK Int'l Airport, Jamaica, NY; air freight forwarder; American Motorists Insurance Co. (PB 11/22/77) D 3/21/80 [1] | Mar. 21, 1980 | Mar. 21, 1980 | New York Seaport; $50,000 |
| John L. Alvarez d/b/a Alvarez Truck Brokers, P.O. Box 747, Pharr, TX; motor carrier; Lawyers Surety Corp. | Mar. 26, 1980 | Apr. 22, 1980 | Laredo, TX; $25,000 |
| Automobile Transport, Inc., 36555 Michigan Ave., Wayne, MI; motor carrier; Insurance Co. of North America. D 5/14/80 | Sept. 3, 1977 | Sept. 7, 1977 | Detroit, MI; $50,000 |
| Charlton Bros. Transportation Co., Inc., 552 Jefferson St., Hagerstown, MD; motor carrier; The American Ins. Co. | Apr. 7, 1980 | Apr. 28, 1980 | Baltimore, MD; $25, 000 |
| Con-Ov-Air Air Freight Service, Inc., 55 Edgeboro Road, East Brunswick, NJ; motor carrier; Fidelity & Deposit Co. of Maryland | Apr. 10, 1980 | Apr. 18, 1980 | Newark, NJ; $50, 000 |

Footnotes at end of table.

| Name of principal and surety | Date of bond | Date of approval | Filed with district director/area director/amount |
|---|---|---|---|
| Consolidated Freightways Corporation of Delaware and C.F. Air Freight, Inc., 175 Linfield Dr., Menlo Park, CA; motor carrier; Safeco Ins. Co. of America (PB 4/28/77) D 5/18/80 [3] | Apr. 14, 1980 | May 18, 1980 | Portland, OR; $50,000 |
| Denver-Midwest Motor Freight, Inc. (A Co. Corp.), P. O. Box 996, Denver, CO; motor carrier; St. Paul Fire & Marine Ins. Co. | Jan. 3, 1980 | Mar. 3, 1980 | El Paso, TX; $25,000 |
| Eagle Air Freight, 15911 Morales, Houston, TX; motor carrier; St. Paul Fire & Marine Ins. Co. | Apr. 1, 1980 | Apr. 21, 1980 | Houston, TX; $25,000 |
| Ericon International Corp., 5663 Swanville Rd., Erie, PA; contract carrier; St. Paul Fire and Marine Ins. Co. | Apr. 25, 1980 | Apr. 30, 1980 | Cleveland, OH; $50,000 |
| Flight Express Cargo, Inc., P. O. Box 67, Essington, PA; motor carrier; Aetna Casualty & Surety Co. D 4/7/80 | Mar. 23, 1977 | Aug. 19, 1977 | Philadelphia, PA; $25,000 |
| Franks & Son, Inc., Route 1, Box 108A, Big Cabin, OK; motor carrier; Kansas City Fire & Marine Ins. (PB 2/23/77) D 2/23/80 [3] | Feb. 23, 1980 | Apr. 14, 1980 | Nogales, AZ; $25,000 |
| Fredrick Transport, Ltd., RR No. 6, Chatham, Ontario, Canada; motor carrier; Lawyers Surety Corp. | Mar. 21, 1980 | May 8, 1980 | Detroit, MI; $50,000 |
| Donald A. Hosford, d/b/a The Herbert C. Hosford Co., 1222 Linden Ave., Erie, PA; freight forwarder; St. Paul Fire & Marine Ins. Co. D 4/30/80 | May 11, 1978 | May 31, 1978 | Cleveland, OH; $50,000 |
| Indiana Transit Service, Inc., 4300 W. Morris St., Indianapolis, IN; motor carrier; Fidelity and Deposit Co. of MD D 4/8/80 | Mar. 27, 1979 | Apr. 4, 1979 | Chicago, IL; $25,000 |
| Inland State Air Enterprises, Inc., P.O. Box 4580, Station D, Hamilton, Ontario, Canada; motor carrier; Commercial Union Ins. Co. | Apr. 17, 1980 | May 12, 1980 | Detroit, MI; $50,000 |
| Inter-City Truck Lines (Canada) Inc., P.O. Box 900 Station "U", Toronto, Ontario, Canada; motor carrier; United States Fidelity & Guaranty Co., (PB 8/2/72) D 4/17/80 [4] | Aug. 2, 1979 | Apr. 17, 1980 | Detroit, MI; $50,000 |
| Intercontinental Forwarders, Inc., 9 Dearborn Rd., Peabody, MA; motor carrier; Investors Insurance Company of America (PB 11/25/75) D 5/20/80 [5] | May 2, 1980 | May 20, 1980 | Boston, MA; $50,000 |
| Johnson Motor Lines, Inc., 2426 N. Graham St., Charlotte, NC; P. O. Box 31577; motor carrier; Insurance Company of North America (PB3/4/57) D 5/14/80 [6] | Apr. 29, 1980 | May 14, 1980 | New York Seaport; $25,000 |
| Laurel Hill Trucking Co., 614 New County Rd., Secaucus, NJ; motor carrier; Federal Insurance Co. | Oct. 16, 1979 | May 7, 1980 | Newark, NJ; $50,000 |

Footnotes at end of table.

| Name of principal and surety | Date of bond | Date of approval | Filed with district director/area director/amount |
|---|---|---|---|
| Miller Livestock Truck Co., Inc., Route 8, Box 224, Bakersfield, CA; motor carrier; Peerless Ins. Co. (PB 10/20/78) D 5/2/80[7] | Apr. 24, 1980 | May 2, 1980 | Laredo, TX; $25,000 |
| Norfolk Shipbuilding & Drydock Corp., Foot of Liberty Street, Norfolk, VA; motor carrier; Fidelity and Deposit Co. D 4/17/80 | Dec. 3, 1979 | Dec. 18, 1979 | Norfolk, VA; $25,000 |
| Francisco Vega Otero, Inc., P. O. Box 175, Caguas, PR; motor carrier; Peerless Ins. Co. (PB 10/26/76) D 2/25/80 | Aug. 28, 1979 | Feb. 25, 1980 | San Juan, PR; $25,000 |
| Theadore J. Suleski, T/A Pacific East Air Freight Transfer, Inc., 34 Lakeview Dr., Cherry Hill, NJ; motor carrier; Fidelity & Deposit Co. D 5/15/80 | Feb. 21, 1979 | Mar. 30, 1979 | Philadelphia, PA; $25,000 |
| Serv-U, Inc., P.O. Box 18451, Baltimore, Md; motor carrier; Fidelity and Deposit Co. of Maryland | May 19, 1980 | May 20, 1980 | Baltimore, MD; $25,000 |
| Southwest Equipment Rental, Inc., d/b/a Southwest Motor Freight, P.O. Box 9596, Chattanooga, TN; motor carrier; The Glen Falls Ins. Co. | Mar. 20, 1980 | Apr. 30, 1980 | New Orleans, LA; $50,000 |
| Joe H. Tidwell, P.O. Box 826, Pharr, TX; motor carrier; Fidelity and Deposit Co. (PB 5/1/79) D 5/5/80[8] | May 1, 1980 | May 5, 1980 | Laredo, TX; $25,000 |
| Travis Transportation, Inc., 6013 Rittiman Plaza, San Antonio, TX; motor carrier; United States Fidelity and Guaranty Co. | May 8, 1980 | May 16, 1980 | Laredo, TX; $25,000 |
| Valley Distributing & Storage Co., Inc., 1 Passan Drive, RD #2, Lafiin, PA; motor carrier; U.S. Fidelity and Guaranty Co. (PB 8/9/77) D 3/31/80[9] | Feb. 26, 1980 | Mar. 31, 1980 | Philadelphia, PA; $25,000 |
| Walt Wilson Trucking, Inc., P.O. Box 2008, Petaluma, CA; motor carrier; The Continental Insurance Co. | Apr. 10, 1980 | May 13, 1980 | San Francisco, CA; $30,000 |
| Younger Transportation, Inc., P.O. Box 14066, Houston, TX; motor carrier; Lawyers Surety Corp. | Mar. 4, 1980 | Apr. 18, 1980 | New Orleans, LA; $25,000 |

[1] Principal is Air Express International Corp.
[2] Principal is Consolidated Freightways Corp. of Delaware; C. F. Tank Lines, Inc., and C. F. Air Freight, Inc. Surety is Seaboard Surety Co.
[3] Surety is Continental Casualty Co.
[4] Principal is Inter-City Truck Lines Ltd.
[5] Surety is The Aetna Casualty & Surety Co.
[6] Surety is Seaboard Surety Co.
[7] Surety is Aetna Insurance Co.
[8] Principal is Joe H. Tidwell d/b/a Northeast Truck Brokers. Surety is United States Fire Insurance Co.
[9] Surety is The Aetna Casualty & Surety Co.

BON-3-03

GEORGE C. STEUART
(For Alfred G. Scholle, Director,
Carriers, Drawback and Bonds Division).

(T.D. 80–148)

## Foreign Currencies—Daily Rates for Countries Not on Quarterly Lists

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Brazil cruzeiro, People's Republic of China yuan, Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical), and Venezuela bolivar

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

| | |
|---|---|
| Brazil cruzeiro: | |
| May 12–13, 1980 | $0.0204 |
| May 14–16, 1980 | .0199 |
| People's Republic of China yuan: | |
| May 12, 1980 | $0.665823 |
| May 13, 1980 | .669165 |
| May 14, 1980 | .668896 |
| May 15–16, 1980 | .669165 |
| Hong Kong dollar: | |
| May 12, 1980 | $0.204708 |
| May 13, 1980 | .204834 |
| May 14, 1980 | .204353 |
| May 15, 1980 | .203749 |
| May 16, 1980 | .203583 |
| Iran rial: | |
| May 12–16, 1980 | Not available |
| Philippines peso: | |
| May 12–16, 1980 | $0.1345 |
| Singapore dollar: | |
| May 12–13, 1980 | $0.461894 |
| May 14, 1980 | .462963 |
| May 15, 1980 | .461681 |
| May 16, 1980 | .463285 |
| Thailand baht (tical): | |
| May 12–16, 1980 | $0.0490 |

Venezuela bolivar:
May 12–16, 1980 ..... $0.2329

(LIQ-3-TRODE)

Dated: May 28, 1980.

G. SCOTT SHREVE
(For Chester R. Krayton, Director,
Duty Assessment Division).

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(T.D. 80-149)

## Foreign Currencies—Variances From Quarterly Rate

Rates of exchange based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in T.D. 80-103 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Austria schilling:
May 12, 1980 ..... $0.078003
May 13, 1980 ..... .078493
May 14, 1980 ..... .078247
May 15, 1980 ..... .078125
May 16, 1980 ..... .077942

Belgium franc:
May 12, 1980 ..... $0.034698
May 13, 1980 ..... .034566
May 14, 1980 ..... .034710
May 15, 1980 ..... .034698
May 16, 1980 ..... .034650

Denmark krone:
May 12, 1980 ..... $0.178174
May 13, 1980 ..... .177936
May 14, 1980 ..... .178651
May 15, 1980 ..... .178476
May 16, 1980 ..... .178333

| | |
|---|---|
| Finland markka: | |
| May 12, 1980 | $0.269505 |
| May 13, 1980 | .270599 |
| May 14, 1980 | .270234 |
| May 15, 1980 | .270453 |
| May 16, 1980 | .270270 |
| France franc: | |
| May 12, 1980 | $0.238521 |
| May 13, 1980 | .237812 |
| May 14, 1980 | .238692 |
| May 15, 1980 | .238949 |
| May 16, 1980 | .238379 |
| Germany deutsche mark: | |
| May 12, 1980 | $0.558441 |
| May 13, 1980 | .557351 |
| May 14, 1980 | .558909 |
| May 15, 1980 | .558347 |
| May 16, 1980 | .557476 |
| India rupee: | |
| May 12, 1980 | $0.1269 |
| May 13–16, 1980 | .1266 |
| Ireland pound: | |
| May 12, 1980 | $2.0720 |
| May 13, 1980 | 2.0770 |
| May 14, 1980 | 2.0710 |
| May 15, 1980 | 2.0735 |
| May 16, 1980 | 2.0715 |
| Italy lira: | |
| May 12, 1980 | $0.001180 |
| May 13, 1980 | .001182 |
| May 14, 1980 | .001186 |
| May 15, 1980 | .001187 |
| May 16, 1980 | .001182 |
| Japan yen: | |
| May 12, 1980 | $0.004409 |
| May 13, 1980 | .004391 |
| May 14, 1980 | .004401 |
| May 15, 1980 | .004390 |
| May 16, 1980 | .004355 |
| Malaysia dollar: | |
| May 12, 1980 | $0.455789 |
| May 13, 1980 | .457457 |

| | |
|---|---|
| May 14, 1980 | .459348 |
| May 15, 1980 | .459137 |
| May 16, 1980 | .459559 |
| Netherlands guilder: | |
| May 12, 1980 | $0.506842 |
| May 13, 1980 | .505433 |
| May 14, 1980 | .507099 |
| May 15, 1980 | .507099 |
| May 16, 1980 | .506329 |
| Norway krone: | |
| May 12, 1980 | $0.202840 |
| May 13, 1980 | .203293 |
| May 14, 1980 | .203770 |
| May 15, 1980 | .203770 |
| May 16, 1980 | .203087 |
| Portugal escudo: | |
| May 12, 1980 | $0.020284 |
| May 13, 1980 | .020305 |
| May 14, 1980 | .020408 |
| Sweden krona: | |
| May 12, 1980 | $0.236295 |
| May 13, 1980 | .236742 |
| May 14, 1980 | .237079 |
| May 15, 1980 | .237107 |
| May 16, 1980 | .236630 |
| Switzerland franc: | |
| May 12, 1980 | $0.602047 |
| May 13, 1980 | .599880 |
| May 14, 1980 | .602410 |
| May 15, 1980 | .600781 |
| May 16, 1980 | .598440 |
| United Kingdom pound: | |
| May 12, 1980 | $2.2810 |
| May 13, 1980 | 2.2790 |
| May 14, 1980 | 2.2975 |
| May 15, 1980 | 2.3005 |
| May 16, 1980 | 2.2840 |

(LIQ-3-TRODE)

Dated: May 28, 1980.

G. SCOTT SHREVE
(For Chester R. Krayton, Director,
Duty Assessment Division).

320-980 O - 80 - 2 : QL 3

(T.D. 80–150)

## Tuna Fish—Tariff-Rate Quota

The tariff-rate quota for the calendar year 1980, on tuna classifiable under item 112.30, Tariff Schedules of the United States

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Announcement of the quota quantity for tuna for calendar year 1980.

SUMMARY: Each year the tariff-rate quota for tuna fish described in item 112.30, Tariff Schedules of the United States (TSUS), is based on the U.S. pack of canned tuna during the preceding calendar year.

EFFECTIVE DATES: The 1980 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for consumption during the period January 1 through December 31, 1980.

FOR FURTHER INFORMATION CONTACT: Helen C. Rohrbaugh, Head, Quota Section, Duty Assessment Division, Office of Commercial Operations, U.S. Customs Service, Washington, D.C. 20229; 202–566–8592.

It has now been determined that 109,074,094 pounds of tuna may be entered for consumption or withdrawn from warehouse for consumption during the calendar year 1980 at the rate of 6 per centum ad valorem under item 112.30, TSUS. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 per centum ad valorem under item 112.34 of the tariff schedules.

(QUO–2–0:D:S:Q GH)

Dated: May 30, 1980.

R. E. CHASEN,
*Commissioner of Customs.*

[Published in the Federal Register, June 5, 1980 (45 F.R. 37940)

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(T.D. 80–151)

## Importations Temporarily Free of Duty; Customs Regulations Amended

Sections 54.5 and 54.6, Customs Regulations, relating to metal articles imported to be used in remanufacture by melting, amended

### TITLE 19—CUSTOMS DUTIES

### CHAPTER I—U.S. CUSTOMS SERVICE

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to conform to legislation extending until June 30, 1981, the existing suspension of Customs duty on certain metal waste and scrap and other articles of metal imported to be used in remanufacture by melting. The legislation also suspends the duty on certain articles of metal imported to be processed by shredding, shearing, compacting, or similar processing which renders them fit only for the recovery of the metal content. These changes will expedite the entry and use of these articles and, because recovery of metal from metal waste and scrap usually requires less energy than is needed to produce metals from ores, aid in energy conservation. The amendments are not considered to be significant.

EFFECTIVE DATE: Upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Leonard J. Emmert, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–8181.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Public Law 95–508, approved October 24, 1978, amended items 911.11 and 911.12, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), to suspend, until June 30, 1981, Customs duty on certain articles of metal imported to be processed by shredding, shearing, compacting, or similar processing which renders them fit only for the recovery of the metal content. The legislation also extended until June 30, 1981, the existing suspension of duty on certain metal waste and scrap and other articles of metal imported to be used in remanufacture by melting.

The temporary suspension of duty on metal waste and scrap has been in effect almost continuously since 1942. On October 1, 1950, it was extended to include articles of metal imported to be used, and actually used, in remanufacture by melting (act of March 13, 1942, 56 Stat. 171, as amended by Public Law 869, 81st Congress; see T.D. 52656, 86 Treas. Dec. 27 (1951)).

The suspension of duty on metal waste and scrap originally was instituted to assist steel producers in some sections of the United States in obtaining adequate supplies of raw materials. Duty-free importation was permitted for certain metal articles provided that the importer submitted a certificate of remelting to Customs within 3 years of importation, verifying that the articles actually were used in remanufacture by melting.

The limitation of proof of actual use to a certificate of remelting has been found to be overly restrictive and unnecessarily burdensome to U.S. mills and refiners using imported scrap metal. It is anticipated that providing importers with the alternative of furnishing proof that the articles have been processed by shredding, shearing, compacting, or similar processing which renders them fit only for the recovery of the metal content, will eliminate the difficulties encountered in furnishing proof of remanufacture by melting and the attendant delay in liquidating entries awaiting such proof. The extension also is expected to aid in energy conservation because the recovery of metal from metal waste and scrap usually requires less energy than is needed to produce metals from ores. While the duty on these articles has been suspended until June 30, 1981, because it will be necessary for Congress to consider whether to continue the suspension beyond that date, the regulations provide that the suspension is in force during the effective period of items 911.11 and 911.12, TSUS.

Articles of copper now are listed as an exception to the free entry provision in section 54.5(a), Customs Regulations. However, item 911.11, TSUS, provides for the duty-free entry of these articles if to be used in remanufacture by melting, or to be processed by shredding, shearing, compacting, or similar processing which renders them fit only for the recovery of the metal content. To correct this inconsistency, copper is deleted from the exemptions in section 54.5(a).

### INAPPLICABILITY OF PUBLIC NOTICE AND DELAYED EFFECTIVE DATE PROVISIONS

Because this is a technical amendment in which the public does not have a particular interest and it merely implements a statutory requirement, notice and public procedure pursuant to 5 U.S.C. 553(b)(B) are unnecessary. In accordance with 5 U.S.C. 553(d)(1), a delayed effective date is not required because this amendment grants an exemption.

### AMENDMENTS TO THE REGULATIONS

Part 54, Customs Regulations (19 CFR 54), is amended to read as follows:

## PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

### METAL ARTICLES IMPORTED TO BE USED IN REMANUFACTURE BY MELTING, OR TO BE PROCESSED BY SHREDDING, SHEARING, COMPACTING, OR SIMILAR PROCESSING WHICH RENDERS THEM FIT ONLY FOR THE RECOVERY OF THE METAL CONTENT



AUTHORITY: R.S. 251, as amended, sec. 624, 46 Stat. 759, 19 U.S.C. 66, 1624, gen. hdnte. 11, Tariff Schedules of the United States (TSUS), (sec.

101, 76 Stat. 72; item 911.10, TSUS, 92 Stat. 1774; items 911.11 and 911.12, TSUS).

SOURCE: 28 FR 14838, Dec. 31, 1963, as amended by T.D. 80– ( F.R. ).

54.5 Scope of exemptions; nondeposit of estimated duty.

(a) Except as otherwise provided in this section, articles in chief value of metal to be used in remanufacture by melting, or to be processed by shredding, shearing, compacting, or similar processing which renders them fit only for the recovery of the metal content, and actually so used, shall be entitled to free entry upon compliance with section 54.6, if entered, or withdrawn from warehouse for consumption, during the effective period of items 911.11 and 911.12, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). This provision does not apply to

(i) articles in chief value of lead, zinc, or tungsten;

(ii) metal-bearing materials provided for in schedule 4, TSUS, or part 1, schedule 6, TSUS: or

(iii) unwrought metal provided for in part 2, schedule 6, TSUS.

(b) No deposit of estimated duty shall be required upon the entry, or withdrawal from warehouse for consumption, of the articles described in paragraph (a) of this section if the district director is satisfied at the time of entry, or withdrawal, by written declaration of the importer that the merchandise is being imported to be used in remanufacture by melting, or to be processed by shredding, shearing, compacting, or similar processing which renders it fit only for the recovery of the metal content.

54.6 Proof of intent; bond; proof of use; liquidation.

Articles in chief value of metal, described in section 54.5(a), shall be admitted free of duty upon compliance with the following conditions:

(a) There shall be filed in connection with the entry [1] a statement of the importer that the articles are to be used in remanufacture by melting, or to be processed by shredding, shearing, compacting, or similar processing which renders them fit only for the recovery of the metal content.

(b) If the articles are entered for consumption, there also shall be filed in connection with the entry a bond on Customs form 7551 or 7553. If the articles are entered for warehouse, the regular warehouse bond, Customs form 7555, shall be given, and withdrawals shall be made on Customs form 7506. The liquidation of the consumption or warehouse entry shall be suspended pending proof of use or other disposition of the articles within the time prescribed in paragraph (c) of this section.

(c) Within 3 years from the date of entry, or withdrawal from warehouse for consumption, the importer shall submit to the district director at the port of entry, a statement from the

[1] "In connection with the entry" means any time before liquidation of the entry or within the period during which a valid reliquidation may be completed (sec. 113.43(c)). Therefore, a claim for free entry under item 911.11 or 911.12, Tariff Schedules of the United States, supported by a statement of intent may be filed at any time before liquidation of the entry or within the period during which a valid reliquidation may be completed.

superintendent or manager of the plant at which the articles were used in remanufacture by melting, or were processed by shredding, shearing, compacting, or similar processing which rendered fit only for the recovery of the metal content, showing:

(1) The name and location of the plant;

(2) The entry number, date, and port of entry (if the person making the statement is not in possession of this information, a reference to invoices, purchase orders, or other documents which will identify the shipment with the entry may be substituted);

(3) The date or inclusive dates of the remanufacture or processing of the articles; and

(4) A description of the remanufacture or processing in sufficient detail to enable the district director to determine whether it constituted a use in remanufacture by melting, or processing by shredding, shearing, compacting, or similar processing which rendered the articles fit only for the recovery of the metal content. In appropriate cases, the remanufacture or processing of the articles covered by more than one entry may be included in one statement. The statement shall be based on adequate and carefully kept plant and import records which shall be available during normal business hours to any Customs officer. The importer and plant manager shall maintain the import and plant records for 5 years from the date of the related entry of the merchandise. The burden shall be on the importer or plant manager to keep these records so that the claim of actual use can be established readily.

(d) If satisfactory proof of use of the articles in remanufacture by melting, or in processing by shredding, shearing, compacting, or similar processing which rendered them fit only for the recovery of the metal content, is furnished within the prescribed time, the entry shall be liquidated without the assessment of duty on the covered articles. If proof is not filed within 3 years from the date of entry, or withdrawal from warehouse for consumption, or the use does not warrant the classification claimed, the entry shall be liquidated without any exemption from duty under item 911.11, or 911.12, Tariff Schedules of the United States.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624) sec. 101, 76 Stat. 72; item 911.10, Tariff Schedules of the United States (TSUS), 92 Stat. 1774; items 911.11 and 911.12, TSUS).

REGULATIONS DETERMINED TO BE NONSIGNIFICANT

In a directive published in the Federal Register on November 8, 1978 (43 F.R. 52120), implementing Executive Order 12044, Improving Government Regulations, the Treasury Department stated that it considers each regulation or amendment to an existing regulation published in the Federal Register and codified in the Code of Federal Regulations to be significant. However, it has been deter-

mined that this amendment does not meet the Treasury Department criteria in the directive for a significant regulation because it is non-substantive, essentially procedural, does not materially change existing or establish new policy, and does not impose substantial additional requirements or costs on, or substantially alter the legal rights or obligations of, those affected.

DRAFTING INFORMATION

The principal author of this document was Lawrence P. Dunham, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

WILLIAM T. ARCHEY,
*Acting Commissioner of Customs.*

Approved: May 9, 1980.
RICHARD J. DAVIS,
*Assistant Secretary of the Treasury.*

[Published in the Federal Register, June 6, 1980 (45 F.R. 38040)]

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(T.D. 80–152)

## Coastwise Transportation—Customs Regulations Amended

Sections 4.93(b)(1) and 4.93(b)(2), Customs Regulations, amended to add Bermuda to the lists of nations whose registered vessels are permitted to transport certain articles coastwise.

## TITLE 19—CUSTOMS DUTIES

### CHAPTER I—U.S. CUSTOMS SERVICE

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to add Bermuda to the lists of nations which permit vessels of the United States to transport certain articles specified in section 27, Merchant Marine Act of 1920, as amended, between their ports. Satisfactory evidence has been obtained by the Department of State that Bermuda places no restriction on the transportation of the specified articles by vessels of the United States between ports in Bermuda. This amendment provides reciprocal privileges for vessels of Bermudian registry.

EFFECTIVE DATE: September 14, 1979.

FOR FURTHER INFORMATION CONTACT: John A. Mathis, Carriers, Drawback, and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–5706.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883) (the act), provides generally that no merchandise shall be transported by water, or by land and water, between points in the United States except in vessels built in and documented under the laws of the United States and owned by U.S. citizens. However, the act, as amended by Public Law 90-474 (82 Stat. 700; T.D. 68–227), provides that if the Secretary of State advises the Secretary of the Treasury that a foreign nation does not restrict the transportation of certain articles between its ports by vessels of the United States, reciprocal privileges will be accorded to vessels of that nation, and the prohibition against the transportation of those articles between points in the United States will not apply to its vessels.

Section 4.93(b)(1), Customs Regulations (19 CFR 4.93(b)(1)), lists those nations found to extend reciprocal privileges to vessels of the United States for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks. Those nations found to grant reciprocal privileges to vessels of the United States for the transportation of equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and certain equipment for use with such barges; certain empty instruments of international traffic; and certain stevedoring equipment and material are listed in section 4.93(b)(2), Customs Regulations (19 CFR 4.93 (b)(2)).

On September 14, 1979, the Department of State advised the Secretary of the Treasury that Bermuda places no restriction on the transportation of the articles listed in the act by vessels of the United States between ports in Bermuda. Therefore, reciprocal privileges are accorded to vessels of Bermudian registry as of that date.

FINDING

On the basis of the information received from the Secretary of State, as described above, I find that the Government of Bermuda places no restriction on the transportation of the articles specified in section 27 of the Merchant Marine Act of 1920, as amended, by vessels of the United States between points in Bermuda. Therefore, reciprocal

privileges are accorded to vessels of Bermudian registry as of September 14, 1979.

AMENDMENT TO THE REGULATIONS

To reflect the reciprocal privileges granted to Bermuda, sections 4.93 (b)(1) and (b)(2), Customs Regulations (19 CFR 4.93 (b)(1), (b)(2)), are amended by inserting "Bermuda" in appropriate alphabetical order in the lists of nations under those sections.

(Sec. 27, 41 Stat. 999, as amended, sec. 14, 67 Stat. 516, Public Law 90–474, 82 Stat. 700 (5 U.S.C. 301, 19 U.S.C. 1322(a), 46 U.S.C. 883))

INAPPLICABILITY OF PUBLIC NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS

Because these are minor amendments in which the public is not particularly interested and there is a statutory basis for the described extension of reciprocal privileges, notice and public procedure pursuant to 5 U.S.C. 553(b)(B) are unnecessary. In accordance with 5 U.S.C. 553(d)(1), a delayed effective date is not required because these amendments grant an exemption.

REGULATION DETERMINED TO BE NONSIGNIFICANT

In a directive published in the Federal Register on November 8, 1978 (43 F.R. 52120), implementing Executive Order 12044, Improving Government Regulations, the Treasury Department stated that it considers each regulation or amendment to an existing regulation published in the Federal Register and codified in the Code of Federal Regulations to be significant. However, regulations which are nonsubstantive, are essentially procedural, do not materially change existing or establish new policy, and do not impose substantial additional requirements or costs on, or substantially alter the legal rights or obligations of, those affected, with Secretarial approval may be determined not to be significant. Accordingly, it has been determined that this document does not meet the Treasury Department criteria in the directive for significant regulations.

DRAFTING INFORMATION

The principal author of this document was Janet L. Johnson, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices of the Customs Service and the Departments of State and the Treasury participated in its development.

Dated May 16, 1980.

JOHN P. SIMPSON
(For Assistant Secretary of the Treasury).

[Published in the Federal Register, June 9, 1980 (45 F.R. 38355)]

320-980 O - 80 - 3 : QL 3

(T.D. 80–153)

## Notice That the Customs Service Is Affirming the Standards It Uses for Orange Juice Products in Determining Same kind and Quality Questions Under the Drawback Law

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final determination.

SUMMARY: In a notice published September 27, 1979 (44 F.R. 55690), the Customs Service invited comments on its use of the standards of identities of the Food and Drug Administration (FDA) and the standards of grades of the U.S. Department of Agriculture (USDA) for orange juice products as guidelines in determining same kind and quality questions for purposes of substitution under the drawback law. This notice informs the public and, in particular, the citrus industry, that after a review of the comments received in response to the September 27, 1979, notice, Customs has affirmed its use of FDA standards of identities and USDA standards of grades for orange juice products as guidelines in determining these questions.

FOR FURTHER INFORMATION CONTACT: Norman W. King, Carriers, Drawback, and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–5856.

SUPPLEMENTARY INFORMATION:

### BACKGROUND

"Drawback" denotes a situation in which a duty or tax, lawfully collected, is refunded or remitted, wholly or partially, because of a particular use made of the merchandise on which the duty or tax was collected. One of the more common types of drawback is that allowed, under section 313(a), Tariff Act of 1930 (19 U.S.C. 1313(a)), upon the exportation of articles manufactured or produced in the United States with the use of imported merchandise. Under section 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)), if domestic merchandise of the same kind and quality as imported merchandise is used in the manufacture of new and different articles, drawback may be allowed on the imported merchandise upon the exportation of the articles, notwithstanding the fact that none of the imported merchandise was actually used in the manufacture or production of the exported articles. Section 313(b) is often called the "substitution drawback law." The Customs Service has the responsibility to determine the same kind and quality questions under the substitution drawback law.

Customs has applied consistently the standards of identities of the Food and Drug Administration (FDA) for orange juice products (21 CFR, part 146) as guidelines in determining whether one orange juice product is of the same kind as another. For example, 21 CFR 146.153 defines the standard of identity for "concentrated orange juice for manufacturing," and 21 CFR 146.145 defines the standard of identity for "orange juice from concentrate." Thus, two different orange juice products are defined by these standards.

Customs also has applied consistently the standards of grades of the Department of Agriculture (USDA) for orange juice products (7 CFR, part 2852) as guidelines in determining whether products of the same kind are of the same quality. For example, two batches of orange juice from concentrate that meet the grade A standard under 7 CFR 2852.5681–5691 would be considered to be of the same quality.

An orange juice processor requested Customs to reconsider its ruling that fresh orange juice is not of the same kind and quality as orange juice from concentrate for substitution drawback purposes. The processor proposed to substitute fresh orange juice (identified under 21 CFR 146.135) for orange juice from concentrate (identified under 21 CFR 146.145) for use in the manufacture of pasteurized orange juice (identified under 21 CFR 146.140).

In order that the matter might receive full and fair consideration, Customs published a notice in the Federal Register on September 27, 1979 (44 F.R. 55690), inviting public comments on its use of FDA standards of identities and USDA standards of grades in determining same kind and quality questions for orange juice products under the substitution drawback law. Brief descriptions of the FDA standards of identities and USDA standards of grades, Customs reasons for using those standards, and Customs views as to the possible effects of not using those standards in determining same kind and quality questions, were included in the notice.

### PRESENT PROCEDURES COMPARED WITH PROCESSOR'S PROPOSAL

An example of a situation in which a citrus processor may obtain drawback under the substitution drawback law when the FDA and USDA standards are applied under present procedures follows:

1. The processor obtains a batch of imported duty-paid concentrated orange juice for manufacturing, as defined in the FDA standard of identity (21 CFR 146.153), which meets the grade A quality standard of the USDA (7 CFR 2852.2221–2852.2231).

2. The processor substitutes a domestic batch of concentrated orange juice for manufacturing, as defined in 21 CFR 146.153 that meets the same grade A quality standard as the imported batch.

3. With the use of the imported and substituted domestic batches of concentrates, the processor manufactures a new product, such as orange juice from concentrate, as defined in the FDA standard of identity (21 CFR 146.145), or frozen concentrated orange juice, as defined in the FDA standard of identity (21 CFR 146.146).

4. Upon exportation of the new product, orange juice from concentrate, or frozen concentrated orange juice, manufactured with the use of the imported and/or substituted domestic concentrated orange juice for manufacturing, of the same kind and quality, drawback is allowed in the amount of 99 percent of the duty paid on the imported orange juice.

The orange juice processor, later joined by other processors, asked that Customs reconsider its present procedures and that drawback be allowed on the basis of duty paid on imported concentrated orange juice for manufacturing upon the exportation of pasteurized orange juice produced with the use of fresh orange juice extracted from domestic oranges. The proposal is as follows:

1. A processor would obtain imported duty-paid 65° Brix concentrated orange juice for manufacturing which meets the USDA grade A quality standard.

2. With the use of the imported concentrate, the processor would manufacture a single strength orange juice from concentrate of not less than 11.8° Brix.

3. The processor would substitute fresh orange juice extracted from domestic oranges for the orange juice from concentrate manufactured with the use of the imported concentrate.

4. The processor would export pasteurized orange juice produced with the use of fresh orange juice extracted from domestic oranges.

5. The processor would further process the orange juice from concentrate for domestic consumption, using a heat-treating or pasteurization process.

6. The processor would claim drawback for the duty paid on the imported concentrated orange juice for manufacturing.

In the ruling which Customs is asked to reconsider, Customs applied the FDA standards of identities and the USDA standards of quality grades in deciding that orange juice from concentrate and fresh orange juice extracted from domestic oranges are not of the same kind and quality for drawback substitution purposes. The ruling noted that "orange juice from fresh oranges may differ in degree Brix, color, and taste depending upon the type of orange, its maturity and the season" and is "primarily used to manufacture citrus products and used as 'cutback' in the manufacture of frozen concentrated orange juice." There are no USDA grades of quality standards for fresh orange juice.

On the other hand, orange juice from concentrate is a finished blended product that may be treated by heat, with a minimum degree Brix of 11.8°, ready for consumption and required by the FDA standards of identities to be labeled as "orange juice from concentrate" for the benefit of the consumer. Furthermore, USDA regulations establish standards of quality grades (A, B, and substandard) for orange juice from concentrate based on a scoring system for color, defects, and flavor.

DISCUSSION OF COMMENTS

Comments were received from the Florida Citrus Processors Association, six Florida citrus processors, drawback consultants, Government agencies, and a Texas orange grower.

I. No commenter objected to the use of the USDA standards of grades for orange juice products. Several processors indicated that they did not want to lower the existing quality standards or to change or to lower the rate of duty on imported orange juice. However, most processors objected to Customs use of FDA standards of identities for orange juice products as guidelines in determining whether one orange juice product is of the same kind and quality as another for purposes of the substitution drawback law. They contended that the standards of identities are merely labeling requirements concerning the form of the juice and proposed that Customs use "pounds solids" in combination with the USDA standards of grades to determine same kind and quality questions relating to orange juice products.

"Pounds solids" is a form of measurement, used by both the citrus industry and Customs, to determine the amount of soluble solids, primarily sugars, in orange fruit. "Brix" is a scale for measuring the concentration of the solids in an orange juice product. The "degree Brix" of concentrated orange juice is converted into pounds solids to determine its value. Pounds solids may be converted into gallons to determine the duty on imported concentrated orange juice and the drawback allowed on exportation of orange juice products made with the use of concentrated orange juice.

All orange juice products contain pounds solids. Therefore, under the proposal advanced by the processors (the "pounds solids proposal"), any two orange juice products would be of the same kind for purposes of the substitution drawback law, and if the products were of the same quality, as determined under the USDA standards of grades, the same kind and quality requirements of the substitution drawback law would be satisfied. For example, under the pounds solids proposal, orange juice from concentrate and concentrated orange juice for manufacturing would be the same kind of products because they both contain pounds solids and are used interchangeably by the industry.

Thus, if both products also would meet the USDA grade A quality standards, the same kind and quality requirements would be satisfied.

The pounds solids proposal, however, fails to address an essential requirement of the substitution drawback law which requires that in addition to being of same kind and quality, to be eligible for drawback, the merchandise must be used in the manufacture or production of articles. In interpreting this requirement, the courts have held consistently that "a new and different article must emerge, having a distinctive name, character, and use." (See *Anheuser-Busch Brewing Association* v. *United States*, 207 U.S. 556, 562).

Under the pounds solids proposal, a domestic orange juice product of grade A quality would be substituted for an imported orange juice product of grade A quality, and an orange juice product of grade A quality would be exported. Because all three orange juice products mentioned would be of the same kind and quality, no new and different article of commerce would have emerged from a process of manufacture or production, and an allowance for drawback would be precluded by operation of law.

The USDA standards of grades for orange juice products incorporate by reference the FDA standards of identities. For example, 7 CFR 2852.1581 of the USDA regulations states that

> frozen concentrated orange juice (or frozen orange juice concentrate) is the product as defined in the standards of identity (28 F.R. 10900, 21 CFR 146.146) issued pursuant to the Federal Food, Drug, and Cosmetic Act.

According to the USDA submission, the USDA standards of grades, which incorporate the FDA standards of identities,

> are used by the citrus producing industry, the Commodity Futures Act, supermarket buyers, consumers, and the State of Florida Department of Citrus to define quality levels of various forms of orange juice traded in the marketplace.

Customs concludes, therefore, that the USDA and FDA standards represent industry standards.

For half a century, Customs has used industry standards in its administration of the substitution drawback law. During this extended period, there has not been a judicial challenge to Customs interpretation of the same kind and quality requirements. The pounds solids proposal, discussed above, would result in the abandonment of the FDA standards of identities and, in effect, could make the drawback substitution law inapplicable to orange juice products.

II. Some commenters not in the citrus industry expressed concern that Customs would change its longstanding practice of using industry standards as guidelines in determining same kind and quality. These

commenters suggested if Customs compromises standards accepted by the citrus industry in making same kind and quality determinations relating to orange juice products, it would be granting special treatment to a specific item, and this in turn would endanger the entire drawback substitution program as now constituted. They noted that the standards used by Customs for orange juice products are in fact used by the industry and that is why Customs adopted them in the first instance.

A Texas orange grower commented that the difference between fresh orange juice and orange juice from concentrate is substantial. The commenter noted that fresh orange juice contains natural taste and flavor, but orange juice from concentrate is the derivative of adjustment by man to simulate the character which nature provides. The commenter suggested that to rule that fresh orange juice or pasteurized orange juice is the same kind as orange juice from concentrate would require a change in the FDA and USDA regulations.

A grower-processor from Florida commented that substitution of fresh orange juice for reconstituted orange juice from concentrate would encourage the importation of concentrated orange juice for manufacturing, would affect the domestic market, and a "processor could use this as a 'club' in lowering the field prices of the grower."

In light of Customs determination that the FDA standards of identities and the USDA standards of grades shall continue to be applied, it is unnecessary to address these comments.

III. One processor noted that unlike orange juice products, there are no FDA standards of identities for grapefruit products. This processor also questioned, as a practical matter, whether Customs present practice assists the citrus industry during a disastrous freeze, such as that of January 1977 in Florida, when the industry had to import concentrated orange juice to meet demand.

The commenter is correct in stating there are no FDA standards of identities for grapefruit products. However, the USDA quality grade standards for grapefruit products (7 CFR 2852.1221–1232, 2852.3481–3491, and 2852.6121–6133) define different kinds of grapefruit products. These standards are adaptable for drawback substitution purposes in determining same kind and quality questions in cases in which certain blending processes may produce new products to satisfy the manufacture or production requirements of the substitution drawback law. An FDA proposal to establish standards of identities for grapefruit juice based on the USDA standards and the standards developed by the Codex Alimentarius Commission is pending (43 F.R. 58575).

In response to the processor's second comment, the U.S. International Trade Commission, then the U.S. Tariff Commission, in 1969 reported on its study of the temporary entry provisions of title 19 of the United States Code, which permit exemption from duty or the recovery of duty, including the drawback law. On page 23 of Tariff Commission Publication 286, May 1969, the report states that "the concentrated juice on which duty was returned exceeded total imports of that material in 1965–67 and reflected some imports in 1964, following unusual weather damage to the Florida orange crop." A footnote explains that this is possible because "8 years can elapse from importation to the filing of a claim under drawback." This study indicated that Customs present practice assists the citrus industry in times of natural disasters.

IV. One commenter cited a Customs memorandum dated September 15, 1977, to support the proposal to substitute fresh orange juice for orange juice from concentrate. The memorandum indicated that Customs would allow the substitution of domestic single-strength pineapple juice for single-strength pineapple juice from concentrate. However, the memorandum did not discuss what criteria the juice would have to meet to satisfy the same kind and quality requirement noting that the applicant should indicate the specifications in his drawback statement. The ruling then issued by Customs after receiving the applicant's drawback statement, authorized the substitution of a single-strength domestic pineapple juice for single-strength pineapple juice, both of which met the USDA quality grade standards of 7 CFR 2852.1761–1722. The provisions of 7 CFR 2852.1761 state that canned pineapple juice "means such product as defined in the standard of identity for canned pineapple juice (21 CFR 146.185(a)) issued pursuant to the Federal Food, Drug, and Cosmetic Act." Canned pineapple juice meeting the FDA standard of identity and the USDA grade quality standard was substituted for canned pineapple juice of the same kind and quality. The substituted canned pineapple juice was used to produce a juice medium for packing pineapple. The canned pineapple juice (a noncitrus product) also was used in a blending process with citrus juices, such as orange and grapefruit juices, to produce different products, i.e., blended fruit juices and drinks. This is in accord with present Customs guidelines for orange juice products.

DETERMINATION

The Customs Service affirms its use of FDA standards of identities and USDA standards of grades for orange juice products as guidelines

in determining same kind and quality questions for these products under the substitution drawback law (19 U.S.C. 1313(b)). Customs previous ruling to this effect is affirmed.

Dated: June 2, 1980.

DONALD W. LEWIS,
*Director, Office of*
*Regulations and Rulings.*

[Published in the Federal Register, June 10, 1980 (45 F.R. 39244)]

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(T.D. 80–154)

## Synopses of Drawback Decisions

The following are synopses of drawback rates issued February 27, 1980, to April 4, 1980, inclusive, pursuant to sections 22.1 through 22.5, inclusive, Customs Regulations.

In the synopses below are listed for each drawback rate approved under 19 U.S.C. 1313(a), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner who issued the rate, and the date on which it was signed.

(DRA–1–09)

Dated: June 3, 1980.

GEORGE C. STEUART
(For Alfred G. Scholle, Director,
Carriers, Drawback and Bonds Division).

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(A) Company: APV Co., Inc.
Articles: Plate heat exchangers, plate evaporators.
Merchandise: Imported and/or drawback steel frames, metal plates, gaskets.
Factory: Tonawanda, N.Y.
Statement signed: December 5, 1979.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Boston, March 31, 1980.

(B) Company: Apollo Dyeing & Finishing Co., Inc.
Articles: Bleached, dyed and/or printed piece goods.
Merchandise: Imported piece goods.
Factory: Paterson, N.J.
Statement signed: February 22, 1980.
Basis of claim: Used in, less valuable waste.
Rate issued by Regional Commissioner of Customs: New York, March 17, 1980.

(C) Company: Control Data Corp.
Articles: ECS11, extended core storage systems.
Merchandise: Imported memory module assemblies, in size 14½ by 17½.
Factories: Bloomington and Roseville, Minn.
Statement signed: February 27, 1980.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Chicago, March 27, 1980.

(D) Company: Cummins Charleston, Inc.
Articles: Diesel internal combustion engines.
Merchandise: Imported component parts.
Factory: Charleston, S.C.
Statement signed: February 22, 1980.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Chicago, March 28, 1980.

(E) Company: Decor, Inc.
Articles: Vinyl laminated hardwood panels.
Merchandise: Imported and/or drawback raw hardwood panels.
Factories: Tualatin, Oreg., Elkhart, Ind., Arlington, Tex.
Statement signed: February 22, 1980.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: San Francisco, March 26, 1980.

(F) Company: Digital Equipment Corp.
Articles: Complete computer systems and computer options.
Merchandise: Imported and/or drawback back planes, memory boards.
Factories: Acton, Marlboro (4), Maynard, Hudson (2), Tewksbury, Natick, Springfield, West Springfield, Westfield, Westminster, Worcester, and Westboro (2), Mass.; Aguadilla and St. German, P.R.; Albuquerque, N. Mex.; Augusta, Maine; Colorado Springs, Colo.; Derry, Merrimack, Nashua (4), and Salem (2), N.H.; South

Burlington, Vt.; Mountain View and Santa Ana, Calif.; Phoenix, Ariz.
Statement signed: October 20, 1978.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Boston, March 19, 1980.

(G) Company: E. I. du Pont de Nemours & Co.
Articles: Cellophane film (slit rolls).
Merchandise: Imported cellophane film (wide rolls).
Factory: Clinton, Iowa.
Statement signed: December 11, 1979.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Baltimore, April 2, 1980.

(H) Company: Fiat-Allis Construction Machinery, Inc.
Articles: Wheel loaders, motor graders, crawler tractors, tractor scrapers, and elevating tractor scrapers, dozers, rippers, and other construction machinery and subassemblies and parts, thereof.
Merchandise: Imported tires, diesel engines, axles and axle housings, track shoes, castings, forgings, and construction machinery parts and subassemblies.
Factories: Deerfield and Springfield, Ill.
Statement signed: January 22, 1980.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Chicago, March 6, 1980.

(I) Company: Filon Division of Vistron Corp.
Articles: Polyester fiberglass panels.
Merchandise: Imported fiberglass roving and carrier films.
Factory: Hawthorne, Calif.
Statement signed: March 17, 1980.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Los Angeles, April 1, 1980.
Revokes: T.D. 72–186–N and T.D. 72–230–N.

(J) Company: Hickey-Freeman.
Articles: Men's clothing.
Merchandise: Imported and/or drawback fabric.
Factory: Buffalo, N.Y.

Statement signed: February 14, 1980.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Boston, March 3, 1980.

(K) Company: Hill-Rom Co., Inc.
Articles: Hospital beds.
Merchandise: Imported caster wheels.
Factory: Batesville, Ind.
Statement signed: February 7, 1980.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Chicago, March 27, 1980.

(L) Company: ILC Technology, Inc.
Articles: Fusion research lasers and components.
Merchandise: Imported BK–7 glass, FR–5 glass, LSG91H Nd doped silicate glass, and diamond wire dyes.
Factory: Sunnyvale, Calif.
Statement signed: July 20, 1978.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: San Francisco, February 28, 1980.

(M) Company: International Telephone & Telegraph Corp.
Articles: Finished brake drums.
Merchandise: Imported composite cast iron brake drum castings.
Factory: Tonawanda, N.Y.
Statement signed: January 25, 1980.
Basis of claim: Used in, less valuable waste.
Rate issued by Regional Commissioner of Customs: Boston, April 4, 1980.

(N) Company: Johnson & Towers Baltimore, Inc.
Articles: Generator sets.
Merchandise: Imported and/or drawback generators and diesel engines.
Factory: Baltimore, Md.
Statement signed: January 30, 1980.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Baltimore, March 21, 1980.

(O) Company: K2 Corp.
Articles: Snow skis.
Merchandise: Imported P-Tex (plastic sheeting) and roll-formed steel.
Factory: Vashon Island, Wash.
Statement signed: January 21, 1980.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: San Francisco, March 21, 1980.
Revokes: T.D. 79–129–N.

(P) Company: Martin Marietta Chemicals (Sodyeco Division).
Articles: Dyestuffs.
Merchandise: Imported chemicals.
Factory: Charlotte, N.C.
Statement signed: October 24, 1979.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Miami, March 17, 1980.
Revokes: T.D. 52633–D, as amended by T.D. 52937–D, T.D. 75–245–E, and T.D. 76–327–J.

(Q) Company: C. H. Masland & Sons (Masland Carpets).
Articles: Automotive carpet, household and ancillary floorcovering, rolled goods of unfinished carpet.
Merchandise: Imported and/or drawback carpet backing of manmade or jute fiber yarn and other manmade fibers for manufacture of carpet.
Factories: Lewistown and Carlisle, Pa.
Statement signed: February 19, 1980.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Baltimore, March 21, 1980.

(R) Company: Maui Pineapple Co., Ltd.
Articles: Metal containers (cans).
Merchandise: Imported electronic tinplate sheets.
Factory: Kahului, Maui, Hawaii.
Statement signed: December 27, 1979.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: San Francisco, February 27, 1980.
Revokes: T.D. 70–189–H, as amended by T.D. 78–379–0, to cover successorship from Maui Container Co.

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(S) Company: National Seating Co.
Articles: Truck and bus seats.
Merchandise: Imported fabric piece goods.
Factory: Mansfield, Ohio.
Statement signed: January 11, 1980.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: New York, March 6, 1980.

(T) Company: Owatonna Manufacturing Co., Inc.
Articles: Loaders and self-propelled windrowers.
Merchandise: Imported engines.
Factories: Owatonna, Minn. and Mitchell, S. Dak.
Statement signed: February 28, 1980.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Chicago, March 27, 1980.

(U) Company: Stonecutter Mills Corp.
Articles: Dyed piece goods.
Merchandise: Imported piece goods.
Factory: Spindale, N.C.
Statement signed: February 28, 1980.
Basis of claim: Used in, less valuable waste.
Rate issued by Regional Commissioner of Customs: New York, March 26, 1980.

(V) Company: Timex Corp.
Articles: Watch cases, bezel/crystal assemblies, bezel/crystal push button assemblies, watches, caseback/bezel assemblies.
Merchandise: Imported and/or drawback watch glasses, cases, movements, batteries.
Factories: Little Rock, Ark. (2).
Statement signed: January 31, 1980.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Boston, March 4, 1980.

(W) Company: The Trane Co., Transport Division.
Articles: Refrigeration systems.
Merchandise: Imported diesel engines.
Factory: Montgomery, Ala.
Statement signed: March 24, 1980.
Basis of claim: Appearing in.

Rate issued by Regional Commissioner of Customs: Boston, April 4, 1980.

(X) Company: United Veil Dyeing & Finishing Co.
Articles: Dyed lace piece goods.
Merchandise: Imported lace piece goods.
Factory: Jersey City, N.J.
Statement signed: March 3, 1980.
Basis of claim: Used in, less valuable waste.
Rate issued by Regional Commissioner of Customs: New York, March 26, 1980.
Revokes: T.D. 79-244-I.

(Y) Company: Williams Form Engineering Corp.
Articles: Rock and concrete anchor bolts.
Merchandise: Imported and/or drawback deformed hollow reinforcing bar steel.
Factory: Grand Rapids, Mich.
Statement signed: February 25, 1980.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: New York, March 26, 1980.

(Z) Company: Witco Chemical Corp.
Articles: Overbased magnesium sulfonate.
Merchandise: Imported high alkalinity magnesium sulfate process stream.
Factories: Petrolia and Chester, Pa.; Harvey, La.
Statement signed: January 23, 1980.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: New York, March 6, 1980.

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(T.D. 80-155)

## Foreign Currencies—Daily Rates for Countries Not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Brazil cruzeiro, People's Republic of China yuan, Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical), and Venezuela bolivar

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The

rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

| | |
|---|---|
| Brazil cruzeiro: | |
| May 19–23, 1980 | $0.0199 |
| People's Republic of China yuan: | |
| May 19–22, 1980 | $0.669165 |
| May 23, 1980 | .673174 |
| Hong Kong dollar: | |
| May 19, 1980 | $0.203749 |
| May 20, 1980 | .203625 |
| May 21, 1980 | .203459 |
| May 22, 1980 | .203562 |
| May 23, 1980 | .202922 |
| Iran rial: | |
| May 19–23, 1980 | Not available |
| Philippines peso: | |
| May 19–23, 1980 | $0.1345 |
| Singapore dollar: | |
| May 19, 1980 | $0.462749 |
| May 20, 1980 | .463392 |
| May 21, 1980 | .466853 |
| May 22, 1980 | .463607 |
| May 23, 1980 | .467399 |
| Thailand baht (tical): | |
| May 19–23, 1980 | $0.0490 |
| Venezuela bolivar: | |
| May 19–23, 1980 | $0.2329 |

(LIQ-3-TRODE)

Dated: June 3, 1980.

G. SCOTT SHREVE
(For Chester R. Krayton, Director,
Duty Assessment Division).

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(T.D. 80-156)

## Foreign Currencies—Variances From Quarterly Rate

Rates of exchange based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New

York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in T.D. 80–103 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

| | |
|---|---|
| Australia dollar: | |
| May 20, 1980 | $1.1315 |
| May 21, 1980 | 1.1340 |
| May 22, 1980 | 1.1372 |
| May 23, 1980 | 1.1405 |
| Austria schilling: | |
| May 19, 1980 | $0.077988 |
| May 20, 1980 | .077760 |
| May 21, 1980 | .078186 |
| May 22, 1980 | .078309 |
| May 23, 1980 | .078802 |
| Belgium franc: | |
| May 19-20, 1980 | $0.034578 |
| May 21, 1980 | .034880 |
| May 22, 1980 | .034855 |
| May 23, 1980 | .035075 |
| Denmark krone: | |
| May 19, 1980 | $0.177620 |
| May 20, 1980 | .177541 |
| May 21, 1980 | .179211 |
| May 22, 1980 | .179695 |
| May 23, 1980 | .180278 |
| Finland markka: | |
| May 19, 1980 | $0.270343 |
| May 20, 1980 | .269978 |
| May 21, 1980 | .270709 |
| May 22, 1980 | .271887 |
| May 23, 1980 | .272926 |
| France franc: | |
| May 19, 1980 | $0.237869 |
| May 20, 1980 | .238039 |
| May 21, 1980 | .240154 |
| May 22, 1980 | .240442 |
| May 23, 1980 | .242424 |

| | |
|---|---|
| Germany deutsche mark: | |
| May 19, 1980 | $0. 554785 |
| May 20, 1980 | . 554600 |
| May 21, 1980 | . 559190 |
| May 22, 1980 | . 558815 |
| May 23, 1980 | . 562272 |
| India rupee: | |
| May 19–20, 1980 | $0. 1266 |
| May 21, 1980 | . 1274 |
| May 22–23, 1980 | . 1279 |
| Ireland pound: | |
| May 19, 1980 | $2. 0625 |
| May 20, 1980 | 2. 0660 |
| May 21, 1980 | 2. 0885 |
| May 22, 1980 | 2. 0840 |
| May 23, 1980 | 2. 0925 |
| Italy lira: | |
| May 19, 1980 | $0. 001179 |
| May 20, 1980 | . 001180 |
| May 21, 1980 | . 001187 |
| May 22, 1980 | . 001190 |
| May 23, 1980 | . 001195 |
| Japan yen: | |
| May 19, 1980 | $0. 004367 |
| May 20, 1980 | . 004410 |
| May 21, 1980 | . 004456 |
| May 22, 1980 | . 004463 |
| May 23, 3980 | . 004520 |
| Malaysia dollar: | |
| May 19, 1980 | $0. 457666 |
| May 20, 1980 | . 457247 |
| May 21, 1980 | . 460511 |
| May 22, 1980 | . 457247 |
| May 23, 1980 | . 462428 |
| Netherlands guilder: | |
| May 19, 1980 | $0. 505306 |
| May 20, 1980 | . 505127 |
| May 21, 1980 | . 508828 |
| May 22, 1980 | . 508388 |
| May 23, 1980 | . 512295 |

| | |
|---|---|
| Norway krone: | |
| May 19, 1980 | $0.202634 |
| May 20, 1980 | .202799 |
| May 21, 1980 | .204082 |
| May 22, 1980 | .204583 |
| May 23, 1980 | .205170 |
| Portugal escudo: | |
| May 21, 1980 | $0.020284 |
| May 22, 1980 | .020367 |
| May 23, 1980 | .020408 |
| Sweden krona: | |
| May 20, 1980 | $0.235793 |
| May 21, 1980 | .237643 |
| May 22, 1980 | .237869 |
| May 23, 1980 | .239234 |
| Switzerland franc: | |
| May 19, 1980 | $0.596481 |
| May 20, 1980 | .595415 |
| May 21, 1980 | .601504 |
| May 22, 1980 | .601866 |
| May 23, 1980 | .606061 |
| United Kingdom: | |
| May 19, 1980 | $2.2835 |
| May 20, 1980 | 2.2910 |
| May 21, 1980 | 2.3305 |
| May 22, 1980 | 2.3285 |
| May 23, 1980 | 2.3440 |

(LIQ-3-TRODE)

Dated: June 3, 1980.

G. SCOTT SHREVE
(For Chester R. Krayton,
Duty Assessment Division).

# U.S. Customs Service

## *General Notice*

(TMK-2-RRUEE)

Houseworks, Ltd.

Notice of application for recordation of trade name

On March 27, 1980, there was published in the Federal Register (45 F.R. 20271) a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name Houseworks, Ltd. The notice advised that prior to final action on the application filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), consideration would be given to relevant data, views, or arguments submitted in opposition to the recordation and received not later than 30 days from the date of publication of the notice.

The name Houseworks, Ltd., is hereby recorded as the trade name of Houseworks, Ltd., a corporation organized under the laws of the State of Georgia, located at 3937 Oakcliff Industrial Court, Atlanta, Ga. 30340, when applied to doll house accessories and miniature furniture, manufactured in Hong Kong and Taiwan.

Dated: June 4, 1980.

SALVATORE E. CARAMAGNO,
*Acting Director,*
*Office of Regulations and Rulings.*

# Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1247)

TRAVENOL LABORATORIES, INC. *v.* UNITED STATES, No. 79–40

1. CLASSIFICATION OF IMPORTS—MEDICAL-SURGICAL INTRAVENOUS APPARATUS, ITEM 709.27.

Customs Court judgment holding that certain imported medical or surgical intravenous solution administration sets were properly classified as medical and surgical instruments and apparatus rather than as hose, pipe, or tubing not specially provided for, of rubber or plastics, suitable for conducting gases of liquids, affirmed.

U.S. Court of Customs and Patent Appeals, May 29, 1980

Appeal from U.S. Customs Court, C.D. 4812

[Affirmed]

*Robert E. Burke*, attorney of record for appellant.

*Alice Daniels*, Assistant Attorney General, *David M. Cohen*, Director, *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation.

[Oral argument on May 5, 1980 by *Robert E. Burke* for appellant, and *Sidney N. Weiss* for appellee]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, and MILLER, *Associate Judges*' and WINNER, *Judge*.[1]

RICH, Judge.

[1] This appeal is from the judgment of the U.S. Customs Court in *Travenol Laboratories, Inc.* v. *United States*, 83 Cust. Ct. ——, C.D. 4812, 476 F. Supp. 1075 (1979), granting summary judgment in favor of the United States and sustaining the classification of the imported merchandise. We affirm.

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[1] Hon. Fred M. Winner, Chief Judge, U.S. District Court for the District of Colorado, sitting by designation.

THE IMPORTED MERCHANDISE

The imports are medical or surgical intravenous solution administration sets. The following is the description by the Customs Court (83 Cust. Ct. at ——, 476 F. Supp at 1076). Reference is made to the drawing in its opinion, which we need not repeat.

> The set—which is in chief value of plastic and used to conduct liquids—consists of approximately 70 inches of plastic tubing, a connector, a protector for the connector, a needle adapter, a protector for the needle adapter, a drip chamber, a Flashball [TM] injection site, and a Flo-Trol [TM] clamp. The interior fluid path of the set is sterile as imported.
>
> * * * * * * *
>
> The set is chiefly used in the intravenous administration of blood or other medical solutions to patients and operates in the following manner: The connector is inserted into the outlet of a solution container which is suspended. The drip chamber is half filled, whereupon the Flashball injection site over the needle adapter is grasped and its protector removed. A needle is then attached to the needle adapter and air is removed from the set. The Flo-Trol clamp is then closed and venipuncture performed. After this, the Flashball is squeezed and released and, if the needle is properly inserted into the vein, the blood flows back into the needle adapter. The Flo-Trol clamp is then moved to regulate the flow of the medical solution to the patient.

STATUTES INVOLVED

The following provisions of the Tariff Schedules of the United States (TSUS) are involved:

*Classified under:*
*Schedule 7, part 2:*

SUBPART B.—MEDICAL AND SURGICAL INSTRUMENTS AND APPARATUS; X-RAY APPARATUS

| | | |
|---|---|---|
| * | * * * * * * | |
| | Medical, dental, surgical and veterinary instruments and apparatus (including electromedical apparatus and opthalmic instruments), and parts thereof: | |
| | * * * * * * * | |
| | Other: | |
| | * * * * * * * | |
| 709.27 | Other | 18% ad val. |

*Claimed under:*
*Schedule 7, part 12:*

SUBPART C.—SPECIFIED RUBBER AND PLASTICS PRODUCTS

| | | |
|---|---|---|
| * | * * * * * * | |
| 772.65 | Hose, pipe, and tubing, all the foregoing not specially provided for, of rubber or | |

| | |
|---|---|
| plastics, suitable for conducting gases or liquids, with or without attached fittings | 4% ad val. |

CUSTOMS COURT

The Customs Court rejected appellant's claim that the sets are more specifically provided for as tubing n.s.p.f. under TSUS item 772.65 than as medical/surgical apparatus under item 709.27. It held the reverse to be true.

The court discussed the issue of relative specificity. It called attention to general interpretative rule 10(c), which provides that an article which is susceptible of classification under more than one item is to be classified under the item which most specifically provides for it, finding the rule applicable in the instant case.

The court observed that the present conflict is between a use provision (item 709.27) and an eo nomine provision (item 772.65). The court applied the rule that, in the absence of contrary legislative intent, a use provision is generally more specific than an eo nomine provision. The court noted that item 772.65 is a "basket provision" and applied the principle that such provisions are not to prevail where the article is specially provided for elsewhere in an item which is not qualified by a "not specially provided for" clause. The court found no legislative intent which would preclude application of this principle.

Finally, the court distinguished the cases relied upon by appellant because it found that the TSUS items which they involved were different from those in the case at bar, each having different limitations not applicable to the present case. Furthermore, the TSUS items involved in those cases were found by the court to be general versus eo nomine provisions, whereas here the provisions involved are eo nomine and use provisions, with the eo nomine (tubing) provision containing a "not specially provided for" limitation. The court held that in such a circumstance the eo nomine provision is the less specific of the two.

OPINION

We find no error in the well-reasoned opinion of the Customs Court. Judge Maletz properly applied the law to the facts here involved. We hereby adopt the reasoning of the opinion of the Customs Court as our own.

The judgment of the Customs Court is *affirmed*.

# Decisions of the United States Customs Court



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## *Customs Decision*

(C.D. 4857)

DAVID E. PORTER, PLAINTIFF, *v.* UNITED STATES, DEFENDANT

*Seats for Rapid Transit Cars—Furniture—Parts for Rail Vehicles*

Court No. 76-6-01448

(Dated May 21, 1980)

*Arter Hadden & Hemmendinger* (*Barry E. Cohen* and *Richard S. Green* on the memorandum) for the plaintiff.

*Alice Daniel*, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation (*Madeline B. Kuflik* on the memorandum), for the defendant.

LANDIS, Judge: Pursuant to the per curiam order of the Court of Customs and Patent Appeals remanding this cause to this court to reconsider plaintiff's motion to amend judgment and for further proceedings, this court has reconsidered plaintiff's said motion, previously dismissed, and adhered to its earlier ruling. On its own motion, in view of the defendant's recent memorandum filed March 28, 1980, stating in substance there are no differences for classification purposes in the seats therein involved and listed on plaintiff's invoices, the previous judgment of this Court in *David E. Porter* v. *United States*, 82 Cust. Ct. 259, C.D. 4808, 475 F. Supp. 688 (1979), is now amended as stated herein and in the attached order amending judgment. Further background for this opinion may be found in a Customs rules decision with the same title, at 83 Cust. Ct. 166, C.R.D. 79–16 (1979).

Briefly restated, the facts are these: On June 22, 1979, on cross-motions for summary judgment, the Court concluded, in a written opinion and decision, that the merchandise in issue viz: "transverse rapid transit seats used exclusively in San Francisco Bay Area Rapid Transit (BART) rail vehicles," 82 Cust. Ct. at 260 (italic supplied), should be classified as parts of rail vehicles (TSUS item 690.40) rather than as furniture as classified by Customs (TSUS item 727.55).

Forty-six days after decision and judgment and eight days prior to defendant's appeal, to wit: on August 7, 1979, plaintiff moved, pursuant to Customs Court rule 12.2 for an order amending the June 22, 1979 judgment entered in plaintiff's favor. As this court noted in C.R.D. 79–16, the crux of plaintiff's argument appeared in one paragraph:

> Upon review of the Court's decision and the entry papers in this case, *counsel belatedly recognizes an oversight* in the merchandise described *in its summary judgment motion.* Although the merchandise embraced by the entries in litigation include transverse seats, window seats (both of which are mounted at a right angle to the direction of travel), and longitudinal seats (mounted in the direction of travel), *plaintiff's motion inadvertently addressed only the transverse seats. It should have included the window and longitudinal seats, as these are similar in design* to the transverse seats and are exclusively dedicated as parts of the BART rail vehicle. * * * (Plaintiff's motion to amend judgment, pp. 2–3.) [*Emphasis* supplied.]

The defendant responded that the plaintiff's appellation of its motion, as a motion to amend judgment, was incorrect. In its opposition, the defendant argued:

> * * * The relief sought by plaintiff is for the court to broaden its decision in C.D. 4808 to include merchandise which was not included or considered in the original motion, even though plaintiff had the opportunity to seek adjudication of the classi-

> fication of the other seats in the original motion. * * * The relief sought is more than the mere correction of a clerical error. It is a matter of substance affecting the substantial rights of the parties. * * * " (Defendant's opposition to plaintiff's motion to amend judgment, pp. 2–3.)

Defendant urged that the plaintiff's motion actually constituted a motion for rehearing. So perceived, the motion would have to be dismissed as untimely since by statute, a rehearing in this Court must be sought not later than 30 days after entry of judgment. See 28 U.S.C. 2639 and also Customs Court rule 12.1(a), both of which are set out in C.R.D. 79–16. On September 13, 1979, this court ordered that the plaintiff's motion be dismissed as it "was plainly improper for many reasons." See 83 Cust. Ct. at 169, C.R.D. 79–16.

Further procedural motions are detailed in C.R.D. 79–16; for present purposes, the next significant event occurred on October 4, 1979, when plaintiff cross-appealed to the Court of Customs and Patent Appeals (appeal 80–1) seeking review of the September 13 order.

On February 25, 1980, the Court of Customs and Patent Appeals entered the following per curiam order:

> The court has considered David E. Porter's motion for summary reversal in Customs appeal No. 80–1 and motion to dismiss Customs appeal No. 79–30, the Government's motion to dismiss Customs appeal No. 80–1; and the responses thereto.
>
> It appears from these papers that the judgment of the U.S. Customs Court dated June 22, 1979 (C.D. 4808), which Porter unsuccessfully sought to amend, and from which Customs appeal No. 79–30 has been taken, adjudicates the classification of only a portion of the merchandise which is the subject of the protest and complaint filed by Porter. The protest and complaint are directed to seats, or parts thereof, for rapid transit cars destined for use in the Bay Area Rapid Transit (BART) system. The judgment of June 22, 1979, appears to only cover transverse rapid transit seats. The subject entries apparently include transverse, longitudinal, and window seats. This court does not recognize any substantive distinctions with regard to classification of a transverse seat versus a longitudinal or window seat as urged by the Government in its attempt to characterize the motion to amend an apparent error in the lower court judgment as a motion for rehearing.
>
> Accordingly, these appeals are remanded to the U.S. Customs Court to reconsider Porter's motion to amend judgment of June 22, 1979, which was dismissed on September 13, 1979, and for any further proceedings which may be deemed necessary consistent with this order.

This court, then, is "to reconsider Porter's motion to amend judgment of June 22, 1979."

Porter's motion was made pursuant to Customs Court rule 12.2 which provides:

RULE 12.2 AMENDMENT OF JUDGMENTS

(a) *Clerical mistakes.*—Clerical mistakes in judgments, orders, or other parts of the record, and errors therein arising from oversight or omission, may be corrected by the court at any time on its own initiative or on the motion of any party.

(b) *Mistakes, inadvertence, excusable neglect.*—On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for mistake, inadvertence, surprise, or excusable neglect.

(c) *Harmless error.*—No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. At every stage of the proceeding, the court shall disregard any error or defect which does not affect the substantial rights of the parties.

Plaintiff did not delineate before this court which of the three subsections purportedly encompassed his motion. However, the "harmless error" subsection has not been argued and is inapplicable. Before the CCPA, plaintiff pressed 12.2(*a*) but urged 12.2(*b*) alternatively in a footnote.

No prior decision of this court has interpreted either rule 12.2 (a) or (b). However, the first sentences of Federal Rules of Civil Procedure 60 (a) and (b), from which rules 12 (a) and (b) were derived, are practically identical to this court's rules and have been examined by the Federal courts.

The relevant language from Federal rule 60(a) is: "Clerical mistakes in judgments * * * and errors therein arising from oversight or omission may be corrected * * *." Cases interpreting this rule demonstrate conclusively that there was no clerical error in this case.

At one time, rule 60(a) was confined to errors by the clerk. So, in *West Virginia Oil & Gas Co., Inc.* v. *George E. Breece Lumber Co., Inc., et al.*, 213 F. 2d 702, 705 (5th Cir. 1954), the Court wrote: "A clerical error is generally defined as an error made by a clerk in transcribing or otherwise." In 1967, Judge Bartels of the Eastern District of New York explained that "(t)he term 'clerical mistake' does not mean that it must be made by a clerk." *In re Merry Queen Transfer Corp.*, 266 F. Supp. 605, 607 (E.D.N.Y. 1967). That opinion continues:

> * * * The phrase merely describes the type of error identified with mistakes in transcription, alteration, or omission of any papers and documents which are traditionally or customarily handled or controlled by clerks but which papers or documents may be handled by others. It is a type of mistake or omission mechanical in nature which is apparent on the record and which

> does not involve a legal decision or judgment by an attorney. * * * (Id.)

According to a recent district court decision in Texas: "(i)t is well settled that clerical error specifically refers to error of transcription, copying, or calculation." *International Corporate Enterprises, Inc.* v. *Toshoku Ltd.*, 71 F.R.D. 215, 218, (N.D. Tex. 1976).

The crux of plaintiff's motion to amend judgment before this court is set out above. In sum, plaintiff's motion stated that:

> * * * *counsel belatedly recognizes an oversight in the merchandise described in its summary judgment motion.* * * * *plaintiff's motion inadvertently addressed only the transverse seats.* (Plaintiff's motion to amend judgment, p. 2.) [Italic supplied]

Obviously the difficulty was neither a clerical error nor one of this court.

Yet before the Court of Customs and Patent Appeals, the entire basis for plaintiff's motion somehow was transformed. Now, Porter argued in his brief:

> *To correct the court's technical misdescription of the seats* [italic supplied], on August 7, 1979 Porter moved under Customs Court rule 12.2 to amend the court's opinion to substitute the proper product description—"transverse, window and longitudinal seats"—for "transverse" seats. (Brief in opposition to motion to dismiss appeal No. 80–1, in support of motion to dismiss appeal No. 79–30, and for reversal in appeal No. 80–1 (hereinafter plaintiff's first CCPA brief), pp. 5–6.)

Later in the same brief, plaintiff states:

> We believe that the facts make it abundantly clear that Porter's motion to amend was not a motion for rehearing but that it properly sought, under Customs Court rule 12.2(a), *only to rectify a technical error arising from mere oversight or omission—to wit, an editorial misdescription in the court's opinion.* * * * (Plaintiff's first CCPA brief, p. 9.) [Italic supplied.]

Then plaintiff writes:

> Unfortunately, the Customs Court relied on one of Porter's references to "transverse seats" in writing its opinion. Porter's motion to amend the judgment merely sought to correct this editorial error. * * * (Id., 11.)

Later, plaintiff insists the motion "was directed to a mere editorial matter."

At another point, plaintiff writes:

> * * * the motion merely seeks an editorial change in the court's opinion to clarify the description of the merchandise which the entries contain. (Id., 14.)

(Note that by plaintiff's own admission the consumption entry papers contained no distinctions as to the seats. Id., 5.) What the Customs

Court must do is "make an appropriate technical correction to its opinion." Id., 17. After all this, the matter has become a simple one for plaintiff: "All that is required is a correction of the record to make it 'speak the truth'." Id., 14.

Somewhere between New York and Washington, the truth changed from "counsel belatedly recognizes (his personal) oversight" (in its motion) to "a technical error * * * in the court's opinion." Sometime between the motion to amend judgment here, on August 7, 1979, and plaintiff's first CCPA brief, filed December 17, 1979, what was "plaintiff's motion inadvertently addressed only (to) the transverse seats" became an "editorial error" by this court.

Speaking the truth, there was no clerical technical misdescription mistake by this court.

Since there was no mistake by this court, plaintiff's motion only is tenable under rule 12.2(b). The critical language there is that "the court *may* relieve a party or his legal representative" from a mistake. (Italic supplied.) Relief is discretionary.

Pursuant to the Court of Customs and Patent Appeals' order, and exercising that discretion, the following order was issued by this court on March 10, 1980:

> In furtherance of the February 25, 1980 per curiam order of the U.S. Court of Customs and Patent Appeals in this case, each party hereby is instructed to prepare a memorandum, with affidavits, concerning the following questions: Are the characteristics of the longitudinal and window seats apparently involved in the subject entries different from, for the purposes of classification under the Tariff Schedules of the United States, the transverse seats considered in *David E. Porter* v. *United States*, 82 Cust. Ct. 259, C.D. 4808, 475 F. Supp. 688 (1979)?
>
> The memoranda and affidavits shall be filed with the clerk of this court on or before April 2, 1980.

The critical memorandum was filed by the defendant who wrote:

> We have been advised by the U.S. Customs Service that the longitudinal and window seats are similar in design to the transverse seats. There are only minor design differences relating to the location of the seats within the BART rail vehicle.
>
> Accordingly, for substantive classification purposes, there are no differences between the transverse seats which were the subject of this court's decision in C.D. 4808, and the longitudinal and window seats which are listed on plaintiff's invoices. (Defendant's memorandum, pp. 1–2, Mar. 28, 1980.)

Now, as the Government (the defendant) for the first time has conceded that there are no substantial distinctions with regard to classification of transverse seats versus longitudinal and window seats, listed on plaintiff's invoices, this court accordingly amends its June 22, 1979 judgment to include said longitudinal and window seats.

# Decisions of the United States Customs Court

## *Customs Rules Decisions*

(C.R.D. 80–5)

PPG INDUSTRIES, INC., PLAINTIFF, *v.* UNITED STATES, DEFENDANT

*Memorandum opinion re defendant's motion to dismiss*

Consolidated Court No. 77–10–04458

(Dated May 23, 1980)

*Eugene L. Stewart* for the plaintiff.

*Alice Daniel*, Assistant Attorney General (*Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation; *James A. Resti*, trial attorney), for the defendant.

BOE, Judge: In the above-entitled consolidated action, the merchandise in question consisting of bipolar diaphragm electrolyzers and parts were entered at the ports of entry at Houston and Galveston, Tex., Philadelphia, Pa., and New Orleans, La., between 1969 and 1973. The plaintiff claiming the merchandise in question through error and mistake was not classified as experimental and, accordingly, free from duty, has brought the within action pursuant to sections 1514(a)(7) and 1520(c)(1) and 28 U.S.C. section 1582(a). 19 U.S.C. section 1520(c)(1) provides as follows:

> (c) *Reliquidation of entry.*—Notwithstanding a valid protest was not filed, the appropriate customs officer may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to correct—
>
> (1) a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence, in any entry, liquidation, or other Customs transaction, when the error, mistake, or inadvertence is brought to the attention of the Customs Service within 1 year after the date of entry, or transaction,

> or within 90 days after liquidation or exaction when the liquidation or exaction is made more than 9 months after the date of the entry, or transaction; * * *.

To the action commenced by the plaintiff, the defendant has filed a motion to dismiss for lack of jurisdiction premised on the fact that "requests for reliquidation were not filed within the time period provided for in 19 U.S.C. section 1520(c)(1)."

By order of this court under date of March 21, 1980, a date for oral argument of defendant's motion to dismiss was fixed and determined and which time the court requested that appropriate evidence be presented by the respective parties as to the following:

> (a) the nature of and the manner by which any alleged clerical error, mistake of fact or other inadvertence, not amounting to any error in the construction of a law, in connection with the liquidation of the merchandise in the above-entitled action was brought to the attention of the Customs Service, together with the date and/or dates thereof; and
>
> (b) the nature and contents of all responses made by the Customs Service relating to the alleged errors, mistakes of fact or inadvertence which may have been brought to their attention together with the date and/or dates thereof.

At the time of oral argument plaintiff submitted an offer of proof and/or a compilation of evidentiary facts together with certain exhibits annexed thereto. In view of the uncertainty expressed by plaintiff's counsel with respect to the intended purport of this court's order requesting an evidentiary hearing, the parties were advised by the court upon completion of argument that after examination of the offer of proof and/or compilation of facts submitted by the plaintiff and the defendant's response to be submitted in connection therewith, a date for an evidentiary hearing subsequently would be determined.

After full consideration of the arguments, the offer of proof and/or compilation of evidentiary facts submitted by the plaintiff, as well as other memoranda submitted by respective counsel, the court is satisfied that the timeliness as to when any error, mistake or inadvertence may have been brought to the attention of the Customs Service is in dispute, and that a preliminary evidentiary hearing will not serve to permit an orderly and complete presentation of the facts required to be determined under the provisions of 19 U.S.C. section 1520(c)(1). From the offer of proof and/or the compilation of facts submitted by the plaintiff at the time of oral argument, as well as from the references made by counsel during argument with respect to the

administrative history [1] relating to many of the entries involved in the within action, it appears that the evidence to be adduced with respect to the compliance with the prerequisites provided in 19 U.S.C. section 1520(c)(1) are inextricably intermeshed with the evidentiary facts relating to the merits of the action. To proceed at this juncture with a preliminary evidentiary hearing predictably will result in a fragmented, piecemeal adjudication of the within action which would prove prejudicial to both the plaintiff and the defendant. Accordingly, the court in its sound discretion deems it proper and in the interest of justice to defer its determination of defendant's motion to dismiss until such time as more full and complete evidence can be submitted through regular trial procedure.

In deferring a determination of defendant's motion until a trial on the merits of the within action, the court is not unmindful of the case of *United States* v. *Boe*, 64 CCPA 11, 15 C.A.D. 1177, 543 F. 2d 141 (1976) nor of the case of *Hambro Automotive Corp.* v. *United States*, C.A.D. 1231, 603 F. 2d 850 (1979). In the former case an attempt of the trial court to retain jurisdiction over the cause of action by the denial of the Government's motion to dismiss for lack of jurisdiction was held to be unwarranted in view of the patent and undisputed premature filing of a protest prior to liquidation. In *Hambro* the record before the trial court was deemed sufficient to justify its affirmative determination of the Government's motion to dismiss for lack of jurisdiction. The refusal of the trial court to receive testimony as to the nature of the alleged mistake was deemed not to be an abuse of discretion.[2] In view of the fact that the nature of the mistake provided for in 19 U.S.C. section 1520(c)(1) could be clearly ascertained from the record and pleadings before the court, the dismissal of the action by the trial court was deemed appropriate.

It is well settled, as urged by the defendant, that, when challenged, it is the burden of the plaintiff to establish the jurisdiction of the court. *Gibbs* v. *Buck*, 307 U.S. 66 (1939). As stated in *Gibbs* v. *Buck*, however, "As there is no statutory direction for procedure upon an issue of jurisdiction, the mode of its determination is left to the trial court." Id. at 71–72.

Thus, in the case of *Land* v. *Dollar*, 330 U.S. 731 (1947), the U.S. Supreme Court stated:

> (A)lthough as a general rule the district court would have authority to consider questions of jurisdiction on the basis of

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[1] For example, evidence relating to certain penalty proceedings to which the entries in the within consolidated action were originally involved may be material herein.

[2] No discussion is contained in the *Hambro* case as to the matter of timeliness provided for in 19 U.S.C. 1520(c)(1) nor reference made to its prior decision of *Madden Machine Co.* v. *United States*, 61 CCPA 97, C.A.D. 1130, 499 F. 2d 1294 (1974), wherein the affirmative assertion was made that timeliness of a request to reliquidate under sec. 1520(c)(1) goes to the merits of the district director's refusal to reliquidate.

affidavits as well as the pleadings, this is the type of case where the question of jurisdiction is dependent on decision of the merits. (Id. at 735.)

The Court continued:

> We only hold that the district court has jurisdiction to determine its jurisdiction by proceeding to a decision on the merits. (Id. at 739.)

It is manifest, therefore, that when it appears that the question of jurisdiction is intermeshed with facts also relating to the merits of an action, judicial discretion is called for in the exercise of its timely determination of a challenged jurisdiction. In the case of *Zunamon* v. *Brown*, 418 F. 2d 883 (8th Cir. 1969), the U.S. Court of Appeals for the Eighth Circuit concisely places this judicial obligation in perspective:

> There is no one single solution to the question here presented. The scope of the pretrial jurisdictional inquiry must of necessity turn upon the specific pleadings and facts involved in each particular case. Yet in resolving the question of the appropriateness of jurisdiction as measured by the legal certainty of plaintiff's claim, all doubts should be resolved by the district court in favor of allowing a plenary trial rather than a peremptory trial under the guise of an evidentiary jurisdictional hearing. (Id. at 886.)

A similar expression of the general rule is found in the case of *McBeath* v. *Inter-American Citizens for Decency Committee*, 374 F. 2d 359 (5th Cir. 1967):

> Undoubtedly, under rule 12(d) of the Federal Rules of Civil Procedure a court may determine the prerequisites to jurisdiction in advance of a trial on the merits. However, where the factual and jurisdictional issues are completely intermeshed jurisdictional issues should be referred to the merits, for it is impossible to decide the one without the other. [Cases cited.] (Id. at 362–63.)

The defendant's motion challenging the lack of jurisdiction of this court over the subject matter of the within action properly cannot be determined from the pleadings nor the record presently before this court. On the contrary, the offer of proof and/or compilation of evidentiary facts submitted by the plaintiff at the time of oral argument serve to indicate to the court that the evidentiary facts necessary to controvert the jurisdiction challenged by the defendant concurrently are necessary in the submission and ultimate determination of the within action on the merits.

This court indicates no opinion as to the sufficiency of the evidence which may be ultimately submitted by the plaintiff. Suffice it to say, that in the within proceeding this court would deem it an abuse of discretion and prejudicial to the plaintiff to require at this juncture

what has been aptly termed a preemptory trial as to the subject matter of jurisdiction challenged by the defendant.

Accordingly, the determination of defendant's motion to dismiss the within action for lack of jurisdiction of the subject matter will be deferred until the trial of the within action on the merits.

Pursuant to rule 4.7(a)(5) of this court, the defendant is granted a period of 30 days from and after the entry of this memorandum opinion to interpose an answer to plaintiff's complaint.

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(C.R.D. 80–6)

SPRAGUE ELECTRIC COMPANY, PLAINTIFF, *v.* UNITED STATES (CAPAR COMPONENTS CORP., PARTY-IN-INTEREST), DEFENDANT

*Memorandum and Order on Plaintiff's Motion for Rehearing*

Court No. 77–9–03056

[Motion granted in part.]

(Dated May 23, 1980)

*Frederick L. Ikenson*, Esq., for the plaintiff.

*Alice Daniel*, Assistant Attorney General, *David M. Cohen*, Director, Commercial Litigation Branch, *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation, and *Sidney N. Weiss*, trial attorney, for the defendant.

NEWMAN, Judge: Pursuant to rules 12.1 and 4.12 of this court, plaintiff has moved for a rehearing and reconsideration of certain aspects of the decision entered in this case on March 27, 1980 (C.R.D. 80–3).

Briefly, the background of this litigation is as follows: Plaintiff, an American manufacturer of tantalum electrolytic fixed capacitors, has brought this action under 19 U.S.C. 1516(c) (1976) challenging the negative injury determination of the U.S. International Trade Commission (Commission) in investigation No. AA1921–159 (41 F.R. 47604 (1976)), under the Antidumping Act of 1921, as amended (19 U.S.C. 160, et seq. (1970)). That investigation involved tantalum electrolytic fixed capacitors imported from Japan which the Department of the Treasury (Treasury) had determined were being or were likely to be sold in the United States at less than fair value (LTFV) within the meaning of the Antidumping Act, as amended.

Plaintiff contests the Commission's negative injury determination on several grounds, and the parties filed cross-motions for summary judgment contending that there is no genuine issue as to any material

fact. In C.R.D. 80–3, I found, inter alia, that in making its negative determination, the Commission relied upon substantially erroneous import statistics which grossly understated the true value of Japanese tantalum capacitor imports. I agreed with the defendant's contention that if the Commission's original determination could not be sustained because of the incorrect import statistics, an appropriate remedy would be to stay the proceedings in this court pending a new determination by the Commission in light of the correct statistical information. Accordingly, my order denied the cross-motions for summary judgment, and further ordered:

> 2. Proceedings in the instant case shall be stayed pending a reconsideration by the Commission of its original determination in investigation No. AA1921–159 and the taking of a new vote on the question of whether, in light of the correct import statistics for tantalum electrolytic fixed capacitors from Japan, sales of such merchandise at LTFV were injuring or were likely to injure an industry in the United States within the meaning of the Antidumping Act of 1921, as amended; and the Commission may conduct any further proceedings which it deems appropriate, but consistent with this order;
>
> 3. The Commission shall, through counsel for defendant, submit to the court within 90 days from the date of entry of this order (on or before June 25, 1980) its new determination, whether affirmative or negative, together with a complete statement of findings and conclusions, and the reasons or bases therefor, on all material issues of fact or law presented, including the materiality of the corrected import statistics on the Commission's new determination.

In support of its motion for rehearing, plaintiff urges that in making its new determination, the Commission

> should be instructed to include in its deliberations the consideration of Nippon Electric Co.'s plans to increase productive capacity for, and exportation to the United States of, epoxy dipped tantalum electrolytic fixed capacitors (memorandum, at 5).

In C.R.D. 80–3, I made reference to footnote 3 of the Commission majority's statement of reasons (41 F.R. 47605), and agreed with the approach of Commissioner Moore and Commissioner (now Chairman) Bedell in their finding of no likelihood of injury. As stated in footnote 3, Commissioners Moore and Bedell believed that

> since no LTFV margins were found in NEC [Nippon Electric Co.] sales of epoxy dipped capacitors, * * * NEC's anticipated increase in exports of such capacitors to the United States should not be used as a basis for a finding of likelihood of injury.

Nevertheless, as also pointed out in C.R.D. 80–3, in its statement of reasons the Commission majority found there was no likelihood of injury as a result of the LTFV imports, notwithstanding a planned

expansion of Japanese capacity to produce tantalum capacitors in 1976 and 1977, and an anticipated increase in 1977 exports by one Japanese producer.

Upon further review of the issue, I have determined that the Commission should additionally consider in its deliberations on remand, the effect of Nippon's plans to increase productive capacity for, and exportation to the United States, of epoxy dipped tantalum electrolytic fixed capacitors, as requested by plaintiff. I am persuaded to agree with this view by the cogent rationale of Commissioner Parker in his statement of reasons for affirmative determination, in which he concludes that Treasury's decision not to sever or eliminate Nippon's "dipped" capacitors from the class or kind of tantalum capacitors embraced by its LTFV determination (see C.R.D. 80–3, footnote 6) is binding upon the Commission as a matter of law; and "that (the) Commission has no authority to refine or modify the class or kind of merchandise found to be, or likely to be, sold at LTFV". Therefore, with respect to plaintiff's request that the Commission "should be instructed to include in its deliberations the consideration of Nippon Electric Company's plans to increase productive capacity for, and exportation to the United States of, epoxy dipped tantalum electrolytic capacitors", the motion for rehearing is granted.

The only other issue raised by the present motion that warrants comment is whether, as contended by plaintiff, the decision in C.R.D. 80–3 constitutes the sustaining in part of plaintiff's cause of action within the purview of 19 U.S.C. 1516(g)(1976), and hence whether, pursuant to that statute, liquidation of entries of the subject merchandise should be suspended. I am unable to agree with plaintiff's contention.

In C.R.D. 80–3, plaintiff's motion for summary judgment was denied, and there was no motion for partial summary judgment. In staying the proceedings before the court pending reconsideration by the Commission of its original determination and the taking of a new vote, the court has not thereby sustained in part plaintiff's cause of action. In point of fact, originally plaintiff opposed the granting of a remand of the proceedings to the Commission. Finally, with regard to the merits, there has as yet, been no judicial decision in this case that an affirmative injury determination by the Commission was required as a matter of law. Significantly, C.R.D. 80–3 states:

> If in light of the correct import statistics, the Commission can still demonstrate a rational basis for a negative determination, this court will be obliged to sustain such determination.

For the foregoing reasons, it would be improper at this juncture to require the Customs Service to suspend the liquidation of entries of the subject merchandise under 19 U.S.C. 1516(g).

I have carefully considered plaintiff's other arguments in support of its motion for rehearing, and find them lacking in merit.

For the reasons expressed herein, it is hereby ordered:

1. That plaintiff's motion for rehearing is granted to the extent that the Commission is directed to consider in its deliberations on remand the effect of Nippon Electric Co.'s plans to increase productive capacity for, and exportation to the United States, of epoxy dipped tantalum electrolytic fixed capacitors.

2. That the decision in C.R.D. 80–3 is adhered to in all other respects, and the application is denied as to all other issues raised by plaintiff's motion for rehearing.

# Appeal to U.S. Court of Customs and Patent Appeals

APPEAL 80–29.—Armstrong Bros. Tool Co. et al. *v.* United States (Great Neck Saw Manufacturing, Incorporated, Party-in-Interest).—AMERICAN MANUFACTURERS' ACTION—NONPOWERED HAND TOOLS—NEGATIVE INJURY DETERMINATION—ANTIDUMPING ACT—SUMMARY JUDGMENT. Appeal from C.D. 4848.

In this case plaintiffs-appellants, domestic manufacturers and/or wholesalers of certain nonpowered hand tools, instituted an American manufacturers' proceeding in the Customs Court pursuant to 19 U.S.C. 1516(c) (1976), to challenge the determination by the U.S. International Trade Commission (Commission) in investigation No. AA1921–149 (40 F.R. 57517 (1975)), under the Antidumping Act of 1921, as amended (19 U.S.C. 160, et seq (1970)), that an industry in the United States is not being or is not likely to be injured or is not prevented from being established by reason of imported chisels, punches, hammers, sledges, vises, C-clamps, and battery terminal lifters from Japan, sold at less than fair value (LTFV). The actions of the Commission, the Commission staff, and the Secretary of the Treasury by eliminating from the scope of the Commission's investigation battery service tools other than battery terminal lifters were also contested. On motion for summary judgment before the Customs Court, plaintiffs contended that the Commission's negative injury determination was arbitrary, capricious, and not supported by substantial evidence and should be set aside; that the Secretary of the Treasury's amendment of the LTFV determination so as to exclude from the term "battery service tools" all tools other than battery terminal lifters after transmittal of the antidumping investigation to the Commission was ultra vires. The Government cross-moved for summary judgment in its favor. The Customs Court rejected plaintiffs claims, granted defendant-appellee's cross-motion for summary judgment, and dismissed the action.

It is claimed that the Customs Court erred in finding and holding that the negative injury determination of the U.S. International Trade Commission in *Chisels, Punches, Hammers, Sledges, Vises,*

*C-Clamps, and Battery Terminal Lifters from Japan*, investigation No. AA1921–149 (40 F.R. 57517 (1975)), under the Antidumping Act of 1921, as amemded (19 U.S.C. 160 et seq. (1970)), was not arbitrary, was supported by substantial evidence, and was not erroneous as a matter of law; in finding and holding that the limiting of the scope of the Commission's investigation and determination to exclude battery service tools other than battery terminal lifters was lawful and not ultra vires on the part of the Secretary of the Treasury, the Commission, and the Commission staff; in not directing the Secretary of the Treasury to publish a finding of dumping covering chisels, punches, hammers, sledges, vises, C-clamps, and battery service tools from Japan; in not directing the Regional Commissioner of Customs at New York (a) to ascertain the foreign market (or constructed) value and the purchase (or exporter's sales) price of any chisels, punches, hammers, sledges, vises, C-clamps, and battery service tools from Japan covered by New York Seaport consumption entry No. 77–471887 of July 20, 1977, and (b) if and to the extent that the foreign market (or constructed) value exceeds the purchase (or exporter's sales) price, to assess dumping duties; in denying the motion of plaintiffs-appellants for summary judgment; in granting the cross-motion of defendant-appellee for summary judgment; in permitting the Secretary of the Treasury to act contrary to law; and in finding and holding for the defendant-appellee, contrary to law.

# Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the Office of Regulations and Rulings, U.S. Customs Service, and not otherwise published, is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Treasury decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the Office of Regulations and Rulings.

A copy of any decision included in this listing, identified by its date and file number, may be obtained in a form appropriate for public distribution upon written request to the Office of Regulations and Rulings, Attention: Legal Reference Area, room 2404, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229. These copies will be made available at a cost to the requester of 10 cents per page. However, the Customs Service will waive this charge if the total number of pages copied is 10 or less.

Decisions listed in earlier issues of the CUSTOMS BULLETIN, through December 21, 1979, are available in microfiche format at a cost of $17.70 (15 cents per sheet of fiche). It is anticipated that additions to the microfiche will be made quarterly and subscriptions are available. Requests for the microfiche now available and for subscriptions should be directed to the Legal Reference Area. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: May 27, 1980.

JOHN T. ROTH,
*Acting Director,*
*Regulations and Research Division.*

| Date of decision | File No. | Issue |
|---|---|---|
| 5– 8–80 | 060674 | Classification: Silk screen prints (207.00) |
| 5– 8–80 | 060701 | Classification: Wood mouldings (202.66) |
| 2–26–80 | 060964 | Classification: Disposable heating bag (774.55, 799.00) |
| 5– 5–80 | 061017 | Classification: Backpack with aluminum frame (706.24, 735.20) |
| 4–25–80 | 061196 | Classification: Wood pole drapery hardware packs (206.98, 207.00) |
| 5– 8–80 | 061754 | Classification: Skin-cleansing machine (750.45, 750.47) |
| 4–17–80 | 061823 | American selling price: Men's protective boot (700.60) |
| 4–17–80 | 061828 | American selling price: Men's protective boot (700.60) |
| 5– 8–80 | 061830 | Classification: Wood dowels (200.95, 727.40) |
| 1–30–80 | 061838 | Classification: Quilted toddler jacket (376.56, 382.81) |
| 4–25–80 | 061847 | American selling price: Men's protective boots (700.60) |
| 3–25–80 | 061885 | Classification: Crude coal tar base (401.18, 401.80, 403.90) |
| 3–26–80 | 061887 | Classification: Benzenoid drugs (407.85, 793.00) |
| 4–17–80 | 061936 | American selling price: Men's protective boot (700.60) |
| 4–17–80 | 061943 | American selling price: Men's protective boot (700.60) |
| 4– 4–80 | 061944 | Classification: Whether a label on jeans is ornamental (382.00) |
| 3–25–80 | 061974 | Classification: Radio control toy car (737.40, 737.95) |
| 5– 8–80 | 062347 | Classification: Grain- and seed-cleaning equipment (666.25, 678.50, 870.40) |
| 4– 9–80 | 062377 | Classification: Copper-covered fruit and vegetables (657.30, 748.21) |
| 4–17–80 | 062757 | Classification: Audio magnetic tape cassette (724.40, 724.45, 678.50, 685.40) |
| 4–25–80 | 062917 | Classification: Toy banks (737.95) |
| 5– 8–80 | 062959 | Classification: Phenolic resin (405.25) |
| 4–25–80 | 063455 | Classification: Membership cards (256.58, 270.10, 271.10 |
| 5– 8–80 | 064019 | Classification: Citrus molasses (184.85) |
| 4–25–80 | 064025 | Classification: Articles of amber stone (188.30, 520.39, 740.10) |
| 4–11–80 | 064032 | Classification: Paper product (254.80) |
| 4–17–80 | 064146 | Classification: Battery-operated eating aid (682.60, 683.15, 683.32) |
| 4–17–80 | 064184 | Classification: Fire shield for wood or coal-burning stove (657.25) |
| 5– 5–80 | 064195 | Classification: Bonded fiber cloth (770.45, 772.15) |
| 5– 1–80 | 064202 | Classification: Rope-descent article (389.62, 657.40) |
| 5– 5–80 | 064256 | Classification: Plastic scrap (771.15, 793.00) |
| 4–25–80 | 064282 | Classification: Fish scaler (651.47) |
| 4–15–80 | 064295 | Classification: Fiberglass-reinforced bathtubs and showers (770.10, 722.15) |
| 4–17–80 | 064331 | Classification: Electrical paper (253.15, 256.30) |
| 5– 5–80 | 064349 | Classification: Footwear of imitation suede (700.58) |
| 5– 8–80 | 064360 | Classification: Novelty articles (256.90, 389.50, 737.40, 737.95) |

| Date of decision | File No. | Issue |
|---|---|---|
| 4–15–80 | 064361 | Classification: Textile linings for hardhats (382.06, 382.33, 382.78, 382.81) |
| 4–25–80 | 064362 | Classification: Cheese scraps (793.00) |
| 3–28–80 | 064430 | Classification: Stretch-dyed twill fabric (338.30, 349.25) |
| 5– 1–80 | 064433 | Classification: Paper plate holder made from palm leaf (222.64) |
| 5– 5–80 | 064438 | Classification: Schnable vehicle (690.35) |
| 5– 1–80 | 064451 | Classification: Anchor bolt (646.54) |
| 5– 5–80 | 064459 | Classification: Hobby horses (737.80, 737.95) |
| 5– 8–80 | 064476 | Classification: Vinyl-coated, fabric-backed wall coverings (355.65, 772.69) |
| 5– 5–80 | 064478 | Generalized system of preferences: Whether tungsten ore is imported directly from a beneficiary developing country |
| 5– 8–80 | 064495 | Classification: Whether piping on ski jacket is ornamental (382.81) |
| 5– 8–80 | 064508 | Classification: Whether tabs on sleeve of a woman's housecoat are ornamental (382.00) |
| 5– 8–80 | 064542 | Classification: Steel storage bin (653.00, 870.40) |
| 4– 9–80 | 064563 | Classification: Whether label on jeans is ornamental |
| 5– 5–80 | 064609 | Classification: Torch lighter (688.45) |
| 4– 9–80 | 064619 | Classification: Knit ski socks (374.60, 735.06) |
| 4– 4–80 | 064629 | Classification: Air fresheners (772.15, 774.55) |
| 4–17–80 | 064632 | Classification: Air pump tire inflator (661.15, 711.78) |
| 4–25–80 | 064735 | Classification: Wood boomerangs (735.20) |
| 5– 5–80 | 064796 | Classification: Products used in concrete industry (657.25) |

# International Trade Commission Notices

*Investigations by the U.S. International Trade Commission*

DEPARTMENT OF THE TREASURY

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs Officers and others concerned.

R. E. CHASEN,
*Commissioner of Customs.*

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*Notice of Receipt of Requests for Review of Certain Countervailing Duty Orders*

Section 104(b) of the Trade Agreements Act of 1979 in pertinent part provides:

(b) OTHER COUNTERVAILING DUTY ORDERS.—

(1) REVIEW BY COMMISSION UPON REQUEST.—In the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303)—

(A) which is not a countervailing duty order to which subsection (a) applies,

(B) which applies to merchandise which is the product of a country under the agreement, and

(C) which is in effect on January 1, 1980, or which is issued pursuant to court order in an action brought under section 516(d) of that act before that date,

the Commission, upon the request of the government of such a country or of exporters accounting for a significant proportion of exports to the United States of merchandise which is covered by the order, submitted within 3 years after the effective date of title VII of the Tariff Act of 1930 shall make a determination under paragraph (2) of this subsection.

(2) DETERMINATION BY THE COMMISSION.—In a case described in paragraph (1) with respect to which it has received a request for re-

view, the Commission shall commence an investigation to determine whether—

(A) an industry in the United States—

(i) would be materially injured, or

(ii) would be threatened with material injury, or

(B) the establishment of an industry in the United States would be materially retarded,

by reason of imports of the merchandise covered by the countervailing duty if the order were to be revoked.

On March 14, 1980, the Commission published a notice of review of certain countervailing duty orders in the Federal Register, stating that it was the intention of the Commission to establish a schedule on or about April 30, 1980, for the conduct of investigations pursuant to section 104(b) encompassing requests for such investigations that had been received by March 28, 1980. The 19 requests for review which were received by the Commission are listed in attachment A. The Commission will publish notice of the institution of these investigations and will establish hearing dates after receipt from the Department of Commerce of updated information on the amount of the bounty or grant. The tentative dates established by the Department of Commerce for providing this information are also set forth in attachment A.

ATTACHMENT A

*CVD orders for which the Commission has received requests for injury determinations*

| Product and country: | *Tentative date for subsidy information* |
|---|---|
| 1. Float glass/Italy | Oct. 1, 1980 |
| 2. Refrigerators, freezers, and parts/Italy | Oct. 1, 1980 |
| 3. Ski lifts and parts/Italy | Oct. 1, 1980 |
| 4. Steel transmission towers/Italy | Oct. 1, 1980 |
| 5. Compressors and parts/Italy | Oct. 1, 1980 |
| 6. Certain steel products/Italy | Oct. 1, 1980 |
| 7. Steel welded wire mesh/Italy | Oct. 1, 1980 |
| 8. Die presses/Italy | Oct. 1, 1980 |
| 9. Screws/Italy | Oct. 1, 1980 |
| 10. Chains/Italy[1] | Oct. 1, 1980 |
| 11. Optic liquid level sensors/Canada | Jan. 8, 1981 |
| 12. X-radial steel-belted tires/Canada | Jan. 8, 1981 |
| 13. Barley/France | June 19, 1981 |
| 14. Molasses/France | June 19, 1981 |
| 15. Spirits/Ireland | June 20, 1981 |
| 16. Sugar/European Communities | July 21, 1981 |
| 17. Glass beads/Canada | Sept. 2, 1981 |
| 18. Spirits/United Kingdom | [2] |
| 19. Textiles/Pakistan | [3] |

[1] On Apr. 29, 1980, the National Association of Chain Manufacturers, the petitioner in the *Chains from Italy* investigation, sent a letter to the Commission requesting that they be allowed to withdraw the petition. The Commission has not yet acted on this request.

[2] The CVD order was revoked by a notice in the Federal Register of Feb. 15, 1977 (42 F.R. 9168), because the Treasury Department determined that bounties or grants were no longer being paid.

[3] This investigation was instituted by the Commission on May 2, 1980. The Commerce Department informed the Commission that the rates set forth in the Federal Register of July 13, 1979 (44 F.R. 40884), should be considered the most recent subsidy rates for this investigation.

By order of the Commission.
Issued: May 23, 1980.

KENNETH R. MASON,
*Secretary.*

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(332–73)

*Notice of Release for Public Comment of U.S. Administration Draft Comments on Draft Chapter of the Harmonized Commodity Description and Coding System*

AGENCY: U.S. International Trade Commission.

ACTION: Release for public comment, pursuant to Commission investigation No. 332–73, under the authority of section 332(g) of the Tariff Act of 1930, as amended, of a draft of, and draft U.S. comments on, the following chapter of the Harmonized Commodity Description and Coding System.

CHAPTER 73—ARTICLES OF IRON OR STEEL

WRITTEN SUBMISSIONS: Parties wishing to submit written comments should do so by June 16, 1980.

COPIES OF DOCUMENTS: Copies of the draft chapter and draft U.S. comments thereon which are the subject of this notice are available for public inspection at the offices of the Commission, 701 E Street NW., Washington, D.C. 20436, or at 6 World Trade Center, New York, N.Y. 10048. The Commission will also send copies to interested parties upon request.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Nomenclature, Valuation and Related Activities, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; 202–523–0370.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to obtain the comments and views of interested parties with respect to the above mentioned draft chapter of the Harmonized Commodity Description and Coding System, and of the draft U.S. comments thereon.

This notice is being issued pursuant to Commission investigation No. 332–73, instituted on January 31, 1975 (40 F.R. 6329), under section 332(g) of the Tariff Act of 1930. The investigation was initiated in accordance with section 608(c) of the Trade Act of 1974, which provides, in part, that the Commission shall institute an investigation which would provide the basis for—

> (2) full and immediate participation by the U.S. International Trade Commission in the U.S. contribution to technical work of the Harmonized Systems [sic] Committee under the Customs Cooperation Council to assure the recognition of the needs of the United States business community in the development of a Harmonized Code reflecting sound principles of commodity identification and specification and modern producing methods and trading practices * * *.

The Harmonized Commodity Description and Coding System (Harmonized Code) is being developed by the Customs Cooperation Council (CCC), an 80-member international organization with headquarters in Brussels, as an international commodity classification system which will be adaptable for modernized customs tariff nomenclature purposes and for recording, handling, and reporting of transactions in international trade. The Harmonized Code will be based on, and in many respects will be an extension of, the Customs Cooperation Council Nomenclature (CCCN), formerly known as the Brussels Tariff Nomenclature (BTN).

Currently, the technical team working under auspices of the CCC prepares drafts of the various chapters of the Harmonized Code for consideration by the Harmonized System Committee, which was established in order to develop the code. These drafts are forwarded to the members and observers of the Committee for their review and submission of written comments. The Committee meets three times a year to consider these drafts and the written comments and presentations of the various delegations. The review of a particular chapter or group of chapters may extend to more than one meeting.

In 1971, the Department of the Treasury established an Interagency Advisory Committee on Customs Cooperation Council Matters in order to provide a basis for interested Federal agencies to participate with respect to CCC matters. In order to establish and develop U.S. programs and policies with respect to the Harmonized Code, the interagency committee has instituted procedures which take into account the provisions of section 608(c) of the Trade Act of 1974, which call for the Commission to contribute to the U.S. technical input to the Harmonized System Committee. Under these procedures the Commission is preparing technical comments and proposals on the various chapters of the Harmonized Code for consideration by the

interagency committee in the determination of U.S. proposals with respect to the Harmonized Code. In making proposals, the Commission is seeking and taking into consideration the views of trade and industry and other interested parties and of interested Government agencies.

The draft U.S. comments on the chapter of the Harmonized Code released for public comment today relate specifically to the technical team draft of this chapter and should be read in conjunction therewith.

In its public notices of May 4, 1976 (41 F.R. 18716, May 6, 1976), August 9, 1976 (41 F.R. 34370, Aug. 13, 1976), December 20, 1976 (41 F.R. 55948, Dec. 23, 1976), September 1, 1977 (42 F.R. 44852, Sept. 7, 1977), February 7, 1978 (43 F.R. 5902, Feb. 10, 1978), October 16, 1978 (43 F.R. 48723, Oct. 19, 1978), February 14, 1979 (44 F.R. 10435, Feb. 20, 1979), May 16, 1979 (44 F.R. 29740, May 22, 1979), September 5, 1979 (44 F.R. 53112, Sept. 12, 1979), January 28, 1980 (45 F.R. 7648), and February 1, 1980 (45 F.R. 8168), the Commission identified those chapters which have been considered thus far by the Harmonized System Committee, and the chapters for which a technical team draft has been released.

By order of the Commission:

Issued: May 23, 1980.

KENNETH R. MASON,
*Secretary.*

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731–TA–25 (Preliminary)

ANHYDROUS SODIUM METASILICATE FROM FRANCE

*Notice of Institution of Preliminary Antidumping Investigation and Scheduling of Conference*

*Investigation instituted.*—Following receipt of a petition on May 15, 1980, filed by PQ Corp., Valley Forge, Pa., the U.S. International Trade Commission on May 23, 1980, instituted a preliminary antidumping investigation under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from France of anhydrous sodium metasilicate, provided for in item 421.34 of the Tariff Schedules of the United States, allegedly sold or likely to be sold at less than fair value. This investigation will be subject to the provisions of part 207 of the Commission's Rules of

Practice and Procedure (19 CFR 207, 44 F.R. 76457) and particularly, subpart B thereof, effective January 1, 1980.

*Written submissions.*—Any person may submit to the Commission on or before June 16, 1980, a written statement of information pertinent to the subject matter of the investigation. A signed original and 19 copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential business data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

*Conference.*—The Director of Operations of the Commission has scheduled a conference in connection with the investigation for 10 a.m., e.d.t., on June 13, 1980, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigation, Mr. John MacHatton, 202–523–0439. It is anticipated that parties in support of the petition for antidumping duties and parties opposed to such petition will each be collectively allocated one hour within which to make an oral presentation at the conference. Further details concerning the conduct of the conference will be provided by the supervisory investigator.

*Inspection of petition.*—The petition filed in this case is available for public inspection at the Office of the Secretary, U.S. International Trade Commission, and at the New York City office of the U.S. International Trade Commission located at 6 World Trade Center.

Issued: May 23, 1980.

KENNETH R. MASON,
*Secretary.*

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[TA–201–43]

MUSHROOMS

*Cancellation of Prehearing Conference*

Notice is hereby given that the prehearing conference scheduled for June 5, 1980, in this investigation is canceled.

By order of the Commission.

Issued: May 22, 1980.

KENNETH R. MASON,
*Secretary.*

(332–109)

*Study of the Petrochemical Industries in the Countries of the Northern Portion of the Western Hemisphere*

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the U.S. International Trade Commission, following receipt on May 6, 1980, of a request from the U.S. Trade Representative at the direction of the President, has instituted an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) with respect to the petrochemical industries of the countries of the northern portion of the Western Hemisphere.

EFFECTIVE DATE: May 22, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Gersic or Dr. A. Jonnard, Energy and Chemicals Division, Office of Industries, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; 202–523–0451 or 202–523–0423, respectively.

SUPPLEMENTARY INFORMATION: Section 1104 of the Trade Agreements Act of 1979 (Public Law 96–39) directs the President to study the desirability of entering into trade agreements with countries in the northern portion of the Western Hemisphere to promote the economic growth of the United States and such countries and the mutual expansion of market opportunities and to report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate his findings and conclusions. The President's study will include, inter alia, an examination of the competitive opportunities and conditions of competition between such countries and the United States in petrochemicals. The Commission investigation will provide the information and facts for the President's deliberations on petrochemicals.

WRITTEN SUBMISSIONS: Since there will be no public hearing scheduled for this study, written submissions from interested parties are invited concerning any phase of the study. Commercial or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for business information, will be made available for inspection by interested persons. To be insured of consideration by the Commission

in this study, written statements should be submitted at the earliest practicable date, but no later than October 24, 1980. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

COMPLETION DATE: The Commission plans to complete its study and report its findings to the U.S. Trade Representative not later than December 30, 1980.

Issued: May 27, 1980.

KENNETH R. MASON,
*Secretary.*

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| In the Matter of CATHODE SPUTTER COATED GLASS TRANSPARENCIES | Investigation No. 337–TA–79 |

*Remand of Certification of Motion to Terminate*

On May 7, 1980, the presiding officer in the above-captioned case issued the above order, certifying a motion and consent order agreements to the Commission. The Commission is remanding that order to the presiding officer in order to obtain a recommendation regarding whether the consent order agreements should be accepted.

Proposed section 337 consent order rules provide, in proposed section 210.51(a)(2) that: "The licensing or other agreement and any agreements supplemental thereto, and affidavit shall be certified by the presiding officer to the Commission with his recommendation." Although the proposed consent order rules are not in effect, the Commission believes that having the benefit of a recommendation by the presiding officer is beneficial and in conformance with sound administrative practice. Although rule 210.14 of the Commission's Rules of Practice and Procedure reserve certain public interest factors to the Commission for initial consideration, these factors are not exhaustive of all public interest and equitable considerations that the Commission takes into account when deciding whether to accept an agreement. The practice of obtaining a recommendation from the presiding officer has been followed with regard to settlement agreements. See Certain Resistor Chips, investigation No. 337–TA–63/65 (recommended determination of February 22, 1980).

The Commission therefore requests that the presiding officer make recommendations regarding the consent order here in issue.

By order of the Commission.

Issued: May 23, 1980.

KENNETH R. MASON,
*Secretary.*

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| In the Matter of CERTAIN ANAEROBIC IMPREGNATING COMPOSITIONS AND COMPONENTS THEREFOR | Investigation No. 337–TA–71 |

*Commission Determination and Order*

The U.S. International Trade Commission conducted an investigation under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) (section 337) of unfair methods of competition and unfair acts in the unauthorized importation into the United States of certain components for anaerobic impregnating compositions allegedly covered by claims 1, 4, and 12 of U.S. letters patent 4,069,378, or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. On May 15, 1980, the Commission determined that there is no violation of section 337 with respect to investigation No. 337–TA–71. This determination and order provides for the final disposition of the subject investigation by the Commission.

*Determination*

Having reviewed the record in this matter including (1) the submissions filed by the parties, (2) the transcripts of hearings held by the administrative law judge, (3) the recommended determination of the administrative law judge, and (4) complainant's exceptions to the recommended determination and appeals from interlocutory orders of the administrative law judge, the Commission, on May 15, 1980, determined that, with respect to investigation No. 337–TA–71, there is no violation of section 337 of the Tariff Act of 1930, as amended.

*Order*

Accordingly, it is hereby ordered—

1. That complainant's motion to amend the complaint to add allegations on infringement of U.S. letters patent 4,165,400 (motion docket No. 71–30) is denied as moot;

2. That complainant's motion to suspend investigation No. 337–TA–71 pending a final determination by the U.S. Patent and Trademark Office on a reissue application filed by complainant relating to U.S. letters patent 4,079,378 (motion docket No. 71–33) is denied as moot;

3. That investigation No. 337–TA–71 is terminated as to all issues and all parties based on the Commission's determination that there is no

violation of section 337 of the Tariff Act of 1930, as amended, because claims 1, 4, and 12 of U.S. letters patent 4,069,378 are invalid; and

4. That this determination and order be published in the Federal Register and that the determination and order, along with the Commission opinion in support thereof, be served upon each party of record in this investigation and upon the U.S. Department of Health, Education, and Welfare, the U.S. Department of Justice, and the Federal Trade Commission.

By order of the Commission.

Issued: May 27, 1980.

KENNETH R. MASON,
*Secretary.*

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